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FEDERAL COMMUNICATIONS COMMISSION

*Reed E. Hundt, Chairman
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*Reed E. Hundt designated Charman effective November 29, 1993.
**Ervin S. Duggan resigned January 31, 1994.

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Federal Communications Commission Record

Volume 9
Issue 9

Table of Contents

Table of Cases..... i

Table of FCC and Delegated Authority Numbers..... iii

Table of Docket Numbers..... iv

Table of Rulemakings..... v

Table of Localities..... vi

Table by Subject Matter..... vii

Table by Statutory and Rule Provisions..... x

Decisions, Reports, Memorandum Opinions, Orders, and Other Selected Material..... 1821

Table of Cases
Volume 9
Issue 9

Case Name	Page
800 Data Base Access Tariffs and 800 Service Management System	1881
ACN Network	1857
AT&T Communications	1880
AT&T Communications	1882
AT&T Communications	1886
Action Page, Inc.	1821
Afford-A-Call Corporation	1849
Alpha Cellular	1823
Alpha Computers	1889
Amateur Operator Licenses	1909
Amendment of Part 22 - Air-Ground Stations	1940
Amendment of Part 43 - Reporting Requirements	1838
BIS Technology, Inc.	1862
BSP Broadcasting, Inc.	1829
Bell Atlantic Telephone Companies	1878
Bell Atlantic Telephone Companies	1877
Billing Name and Address Tariffs	1958
Brown, Luanne	1875
Buckley Broadcasting Corporation of California	1930
CTC	1892
Calvary Educational Broadcasting Network, Inc.	1834
Carriers File Revisions to Their Cost Allocation Manuals	1927
Catalina Transmission Corp.	1840
Century Southwest Cable Television Corporation	1905
Certified Computers	1850
Channel 12 of Beaumont, Inc.	1825
Chicago MDS Company	1920
Citizens Utilities Company	1873
City of Watsonville	1860
CompuMedia Technology, Inc.	1864
Computer III Remand Proceeding	1887
Cross Country Telecommunications, Inc.	1916
Ellis Thompson Corporation	1888
Emerging Telecommunications Technologies	1943
Emil, John J.	1891
FM 104.9 Broadcasting	1932
Federal Petroleum	1906
Financial Transmission Services, Inc.	1846
Giant Electronics	1894
Hampton Roads Yacht Corporation	1851
IDB Worldcom Services, Inc.	1865
Information Power Systems Corporation	1899
Ingram, David	1853
International Matex Tank Terminals	1854

Case Name	Page
Jovian Logic Corporation	1852
K40 Electronics Limited	1855
KCIT Acquisition Company	1827
Kelley, Walter S.	1923
Koch, Jeffrey Robert	1904
LDDS Communications, Inc.	1844
LXE, Inc.	1861
Lightning Broadcasting Company	1910
MCI Telecommunications Corp.	1843
MCI Telecommunications Corporation	1933
Mahaffey, Steve	1893
McCray, William C., Jr.	1897
McLean, Dan J.	1902
Megabytes Computer Centre	1900
Nevada Bell	1847
PC Warehouse	1859
PCI Communications, Inc.	1841
Pacific Bell	1928
PanAmSat Licensee Corp.	1867
PanAmSat Licensee Corp.	1869
Performance Diesel Service, Inc.	1863
Praise Broadcasting Network, Inc.	1911
Price Cap Performance Review for Local Exchange Carriers	1879
Pueblo Broadcasting Corporation	1832
Rachet Jaw CB Sales	1901
Ramar Communications, Inc.	1831
Shamrock Technology Co., Ltd.	1858
Single AM Radio Stereophonic Transmitting Equipment Standard	1907
Southland Holdings, Inc.	1961
Southwestern Bell Telephone Company	1883
Table of Allotments, FM, Eureka, NV	1936
Table of Allotments, FM, Lancaster, WI and Clinton, IA	1937
Table of Allotments, TV, Kaneohe, HI	1934
Amateur Operator Licenses	1909
Tribune Regional Programming, Inc.	1917
US West Communications, Inc.	1874
US West Communications, Inc.	1876
US West, Inc.	1885
United Telephone Company of Southcentral Kansas, Inc.	1837
Valencia Airport Shuttles, Inc.	1895
Vessel Assist Association of America, Inc.	1896

Table of Cases by Delegated Authority and FCC Number

Volume 9
Issue 9

Delegated Authority or FCC Number	Page
DA 94 - 299	1837
DA 94 - 312	1880
DA 94 - 313	1882
DA 94 - 314	1879
DA 94 - 315	1840
DA 94 - 316	1841
DA 94 - 317	1843
DA 94 - 318	1844
DA 94 - 319	1846
DA 94 - 320	1823
DA 94 - 321	1832
DA 94 - 322	1829
DA 94 - 323	1827
DA 94 - 324	1825
DA 94 - 325	1831
DA 94 - 328	1821
DA 94 - 330	1886
DA 94 - 331	1887
DA 94 - 332	1885
DA 94 - 333	1847
DA 94 - 334	1850
DA 94 - 335	1851
DA 94 - 336	1852
DA 94 - 337	1853
DA 94 - 338	1854
DA 94 - 339	1855
DA 94 - 340	1857
DA 94 - 341	1858
DA 94 - 342	1859
DA 94 - 343	1860
DA 94 - 344	1861
DA 94 - 345	1862
DA 94 - 346	1906
DA 94 - 347	1863
DA 94 - 348	1875
DA 94 - 349	1864
DA 94 - 350	1873
DA 94 - 351	1874
DA 94 - 352	1849
DA 94 - 353	1961
DA 94 - 354	1883
DA 94 - 356	1936
DA 94 - 357	1934
DA 94 - 359	1889
DA 94 - 360	1891
DA 94 - 361	1892
DA 94 - 362	1893
DA 94 - 363	1894
DA 94 - 364	1895
DA 94 - 365	1896
DA 94 - 366	1897
DA 94 - 367	1899
DA 94 - 368	1937
DA 94 - 370	1881
DA 94 - 371	1865
DA 94 - 372	1876
DA 94 - 373	1877
DA 94 - 374	1878
DA 94 - 375	1910
DA 94 - 376	1888
DA 94 - 377	1900
DA 94 - 378	1901
DA 94 - 379	1902
DA 94 - 380	1904
DA 94 - 382	1905
DA 94 - 384	1916
DA 94 - 385	1917
DA 94 - 386	1920
DA 94 - 387	1909
DA 94 - 398	1923
DA 94 - 399	1927
DA 94 - 400	1958
DA 94 - 401	1928
DA 94 - 416	1933
FCC 94 - 60	1943
FCC 94 - 77	1867
FCC 94 - 78	1869
FCC 94 - 83	1940
FCC 94 - 84	1838
FCC 94 - 88	1907
FCC 94 - 91	1930
FCC 94 - 95	1932
FCC 94D - 4	1911
FCC 94R - 4	1834

Table of Cases by Docket Number
Volume 9
Issue 9

Docket Number				Page
CC	Dkt.No.86	-	10	1847
CC	Dkt.No.88	-	2	1885
CC	Dkt.No.90	-	623	1876
CC	Dkt.No.90	-	623	1887
CC	Dkt.No.91	-	121	1940
CC	Dkt.No.92	-	137	1940
CC	Dkt.No.92	-	256	1887
CC	Dkt.No.93	-	5	1838
CC	Dkt.No.93	-	129	1881
CC	Dkt.No.94	-	1	1879
ET	Dkt.No.92	-	9	1943
ET	Dkt.No.92	-	298	1907
MM	Dkt.No.89	-	521	1937
MM	Dkt.No.90	-	557	1911
MM	Dkt.No.91	-	277	1923
MM	Dkt.No.92	-	122	1834
MM	Dkt.No.93	-	282	1936
MM	Dkt.No.94	-	30	1934

Table of Cases by Rulemaking Number
Volume 9
Issue 9

Rulemaking Number	Page
RM - 6792	1940
RM - 6963	1937
RM - 7254	1937
RM - 7859	1940
RM - 7981	1943
RM - 8004	1943
RM - 8371	1936
RM - 8391	1909
RM - 8405	1909
RM - 8406	1909
RM - 8457	1934

Table of Cases by City
Volume 9
Issue 9

City/ State	Page
Albany, GA	1923
Atlantic City, NJ	1888
Baldwin Park, CA	1862
Bayonne, NJ	1854
Beaumont, TX	1825
Bellingham, WA	1893
Caro, MI	1875
Chicago, IL	1917
Chicago, IL	1920
Clemson, SC	1932
Clinton, IA	1937
Costa Mesa, CA	1896
Dallas, TX	1916
Des Moines, WA	1904
East Palo Alto, CA	1897
Eureka, NV	1936
Fremont, CA	1852
Fremont, CA	1864
Fremont, CA	1892
Garden Grove, CA	1850
Hawaiian Gardens, CA	1894
Houston, TX	1832
Jacksonville, FL	1900
Kaneohe, HI	1934
Kasilof, AL	1902
Lancaster, WI	1937
Lubbock, TX	1831
Lyford, TX	1906
Lynwood, WA	1857
Mableton, GA	1853
Manchester, IA	1937
Manhattan, KS	1889
Morrison, IL	1937
New Baltimore, MI	1891
Norcross, GA	1861
Norfolk, VA	1851
Orange, CA	1901
Palo Alto, CA	1859
Poplar Bluff, MO	1834
San Francisco, CA	1930
San Jose, CA	1827
Santa Fe Springs, CA	1899
Stuart, FL	1863
Valencia, CA	1895
Warren, MI	1855
Watsonville, CA	1860
Wichita Falls, TX	1829
Wrightsville Beach, NC	1911

Subject Index
Volume 9
Issue 9

Subject	Page
Adjudication	
Administrative Law Judge Decision	
Financial qualifications	1834
Orders or Notices	
Translator	1911
Broadcast Radio Services - General Rules	
Applications for authorization	
FM broadcast and FM translator stations applications: processing	1932
Broadcasting - FM Stations	
Allotments and assignments	
Allotments, table of	1936, 1937
Interference	
Blanketing interference, complaints concerning	1834
Broadcasting - TV Stations	
Allocations/assignments/licenses	
Table of assignments	1934
Cable Television Service	
Markets and services	
Cable signals in major markets, provisions for	1910
Carriers: Service Altered	
Extensions and supplements	
Applications, contents of	1840, 1843, 1844, 1846
Commission Organization	
Delegations of authority - Chief, Common Carrier Bureau	
Limitations on delegated authority	1928, 1886
Common Carriers/Affiliates: Reports	
Pensions and benefits, reports on	1838
Reports of carriers and certain affiliates, annual	1838
Common Carriers: Miscellaneous Rules	
Allocation of costs to regulated or non-regulated costs	1927
Enhanced services (computer) and customer-premises equip	1876, 1877
Communications Act of 1934	
Common Carriers	
Extension of lines, certificate for	1840, 1843, 1844, 1846

Subject					Page
Penal provisions; forfeitures					
Rebates and offsets, forfeitures in cases of			1831,	1827,	1825
Radio, provisions relating to					
License for radio communication or trans-	1841,	1875,	1854,	1860	
	1906,	1863,	1893,	1897	
Domestic Public Fixed Radio Services					
Applications and licenses, filing requirements					
Defective applications					1916
Forms shared by all domestic public services, misc.			1917,	1920	
Applications and licenses, processing					
Mutually exclusive applications					1920
Opposition to applications			1917,	1920	
Multipoint distribution service					
Eligible, those common carriers		1916,	1917,	1920	
Frequency interference					1916
Frequency Allocations and Radio Treaty Matters					
Equipment authorization procedures: application procedures					
Identification of equipment		1861,	1862,	1892	
Marketing of radiofrequency devices					
Amplifiers, prohibition against external radio frequency power					1855
Devices not approved, limitations on radio	1850,	1852,	1855,	1857	
	1858,	1859,	1864,	1889	
			1894,	1899	
Personal Radio Services: GMRS, R/C, CB					
CB - operation of systems - rules					
Power amplifiers not allowed					1897
Practice and Procedure					
Common carriers: complaints					
Formal or informal			1849,	1933	
Information, general					
Rules, suspension, amendment, waiver			1873,	1847	
Proceedings, miscellaneous					
Consent orders					1961
Forfeiture proceedings					1821
Reconsideration/review of Commission action					
Reconsideration of a final FCC action,	1932,	1916,	1875,	1850	
	1852,	1853,	1854,	1855	
	1857,	1858,	1859,	1860	
	1861,	1862,	1906,	1863	
	1864,	1889,	1891,	1892	
	1893,	1894,	1895,	1897	
				1899	

Subject	Page
Private Land Mobile Radio Services	
Operating requirements	
Unauthorized operation, precautions against	1895
Public Mobile Service	
Applications and licenses-processing	
Station authorization, transfer of control/assignment of	1821
Public land mobile service	
Air-ground radio telephone service	1940
Radiotelegraph Carriers	
Operated plant accounts: real estate	
Buildings, cost of	1927

TABLE OF STATUTORY AND RULE PROVISIONS

	Page
000.291 Delegated Authority	1883
000.291 Delegated Authority	1928
001.106 Petition for Reconsideration	1850
001.106 Peition for Reconsideraiton	1895
001.106 Peition for Reconsideration	1893
001.106 Petition for Reconsideration	1851
001.106 Petition for Reconsideration	1852
001.106 Petition for Reconsideration	1853
001.106 Petition for Reconsideration	1854
001.106 Petition for Reconsideration	1855
001.106 Petition for Reconsideration	1857
001.106 Petition for Reconsideration	1858
001.106 Petition for Reconsideration	1859
001.106 Petition for Reconsideration	1860
001.106 Petition for Reconsideration	1861
001.106 Petition for Reconsideration	1862
001.106 Petition for Reconsideration	1863
001.106 Petition for Reconsideration	1864
001.106 Petition for Reconsideration	1889
001.106 Petition for Reconsideration	1891
001.106 Petition for Reconsideration	1892
001.106 Petition for Reconsideration	1894
001.106 Petition for Reconsideration	1896
001.106 Petition for Reconsideration	1897
001.106 Petition for Reconsideration	1899
001.106 Petition for Reconsideration	1900
001.106 Petition for Reconsideration	1901
001.106 Petition for Reconsideration	1902
001.106 Petition for Reconsideration	1904
001.106 Petition for Reconsideration	1906
001.106 Petition for Reconsideration, Denied	1932
001.106 Petitions for reconsideration	1916
001.106 Petiton for Reconsideration	1875
001.300 Petition for Waiver	1837
001.300 Petition for Waiver	1873
001.300 Petition for Waiver	1874
001.401 Petitions for rulemaking	1909
001.711 Formal or informal complaints	1849
001.711 Formal or informal complaints	1933
001.771 Tariff Filing	1881
001.800 Forfeiture proceedings.	1821
001.930 Consent Orders	1961
002.803 Equipment requiring Commission approval	1850
002.803 Equipment requiring Commission approval	1852
002.803 Equipment requiring Commission approval	1855
002.803 Equipment requiring Commission approval	1857
002.803 Equipment requiring Commission approval	1858
002.803 Equipment requiring Commission approval	1859
002.803 Equipment requiring Commission approval	1864
002.803 Equipment requiring Commission approval	1889

002.803 Equipment requiring Commission approval 1899
002.803 Equipment requiring Commission approval 1900
002.815 External radio frequency power amplifiers 1855
002.815 External radio frequency power amplifiers 1901
002.925 Identificaion of equipment 1892
002.925 Identification of equipment 1861
002.925 Identification of equipment 1862
0020.803 Equipment requiring Commission approval 1894
0076.610 Disputes concerning carriage 1910
021.11(c) Renewal of station license 1917
021.110(c) Renewal of station license 1920
021.200 Defective applications 1916
021.300 Opposition to applications 1917
021.300 Opposition to applications 1920
021.310 Mutually exclusive applications 1917
021.310 Mutually exclusive applications 1920
021.500 Transition of the 2.11-2.13 and 2.16-2.18 GHz Bands 1943
021.900 Eligibility 1916
021.900 Frequencies 1917
021.900 Frequencies 1920
021.902 Frequency interference 1916
021.902(i) ITFS interference analyses 1916
021.914 Mutually-exclusive MDS applications 1917
021.914 Mutually-exclusive MDS applications 1920
022.390 Transfer of control or assignment of station authori 1821
022.500 Transition of the 2.11-2.13 and 2.16-2.18 GHz Bands 1943
025.111 Additional Information 1867
025.111 Additional Information 1869
0300.302 Devices which interfere with radio reception 1855
032.140 Regulated Accounts 1927
032.230 Nonregulated Activities 1927
043.210(c) Reports of carriers and certain affiliates 1838
043.420 Reports on pensions and benefits 1838
061.410 and 69.3(e) Price Cap Rules 1837
061.410(c) Price Cap Rules 1874
063.001 Contents of Application 1840
063.001 Contents of Application 1843
063.001 Contents of Application 1844
063.001 Contents of Application 1846
063.001 Contents of Application 1865
064.792 Furnishing of Enhanced Services and CPE 1887
073.128 AM Stereophonic Broadcasting 1907
073.202 FM Table of Allotments 1936
073.202, FM Table of Allotments 1937
073.318 Blanketing Interference 1834
073.3555 Multiple ownership 1930
073.3573(g) FM "Hard Look" Policy - Local Public Notice 1932
073.606 TV Table of Allotments 1934
073.670 Commercial Limits in Children's Programs 1825
073.670 Commercial Limits in Children's Programs 1827
073.670 Commercial Limits in Children's Programs 1829
073.670 Commercial Limits in Children's Programs 1831
073.670 Commercial Limits in Children's Programs 1832
076.941 Rate Prescription 1905

076.942 Refunds 1905
080.312 Priority of distress transmission 1896
090.427 Precautions against unauthorized operations 1895
094.590 Transition of the Private 1.85-2.20 GHz Bands 1943
095.409 (CB rule 9) What equipment may I use at my CB statio 1853
095.411 May I use power amplifiers 1897
095.413 (CB rule 13) What communications are prohibited 1853
095.416 (CB rule 16) Do I have to limit the length of my com 1853
300.214 Extension of Lines 1840
300.214 Extension of Lines 1843
300.214 Extension of Lines 1844
300.214 Extension of Lines 1846
300.214 Extension of Lines 1865
300.301 License for radio communicaiton or transmission of e 1897
300.301 License for radio communication or transmision of en 1902
300.301 License for Radio Communication or Transmission of e 1841
300.301 License for Radio Communication or Transmission of e 1851
300.301 License for Radio Communication or transmission of e 1853
300.301 License for radio communication or transmission of e 1854
300.301 License for Radio Communication or Transmission of e 1860
300.301 License for Radio communication or transmission of e 1863
300.301 License for radio communication or transmission of e 1893
300.301 License for radio communication or transmission of e 1904
300.301 License for Radio Communication or Transmission of e 1906
300.301 License of Radio communication or transmission of en 1875
300.302 Devices which interfere with radio reception 1850
300.302 Devices which interfere with radio reception 1852
300.302 Devices which interfere with radio reception 1858
300.302 Devices which interfere with radio reception 1859
300.302 Devices which interfere with radio reception 1861
300.302 Devices which interfere with radio reception 1862
300.302 Devices which interfere with radio reception 1864
300.302 Devices which interfere with radio reception 1889
300.302 Devices which interfere with radio reception 1892
300.302 Devices which interfere with radio reception 1894
300.302 Devices which interfere with radio reception 1899
300.302 Devices which interfere with radio reception 1900
300.302 Devices which interfere with radio reception 1901
300.302 Devices which interfere with redio reception 1857
300.325 False Distress signals; rebroadcasting; studios of f 1875
300.325 False distress signals; Rebroadcasting; studios of f 1891
300.503(b) Forfeitures (NAL) 1825
300.503(b) Forfeitures (NAL) 1827
300.503(b) Forfeitures (NAL) 1829
300.503(b) Forfeitures (NAL) 1831
300.503(b) Forfeitures (NAL) 1832
300.534 Carriage of local commercial television signals 1910
47 C.F.R. 000.291 delegated authority 1880
47 C.F.R. 000.291 delegated authority 1882
47 C.F.R. 000.291 delegated authority 1886
47 C.F.R. 000.291 delegated authority 1958
47 C.F.R. 022.521(b) 1940
47 CFR 062.112 1878
47 CFR 064.702 1877

47 CFR 064.702 1885
47 USC 309 1867
47 USC 309 1869
500.125 - Misrepresentation 1911
500.170 - Financial Qualifications 1911
500.3170 Financial Qualifications 1834
500.502 Forfeitures in cases of rebates and offsets 1900
500.503 Forfeitures in cases of rebates and offsets 1850
500.503 Forfeitures in cases of rebates and offsets 1851
500.503 Forfeitures in cases of rebates and offsets 1852
500.503 Forfeitures in cases of rebates and offsets 1854
500.503 Forfeitures in cases of rebates and offsets 1855
500.503 Forfeitures in cases of rebates and offsets 1857
500.503 Forfeitures in cases of rebates and offsets 1859
500.503 Forfeitures in cases of rebates and offsets 1860
500.503 Forfeitures in cases of rebates and offsets 1861
500.503 Forfeitures in cases of rebates and offsets 1862
500.503 Forfeitures in cases of rebates and offsets 1863
500.503 Forfeitures in cases of rebates and offsets 1864
500.503 Forfeitures in cases of rebates and offsets 1875
500.503 Forfeitures in cases of rebates and offsets 1889
500.503 Forfeitures in cases of rebates and offsets 1891
500.503 Forfeitures in cases of rebates and offsets 1893
500.503 Forfeitures in cases of rebates and offsets 1894
500.503 Forfeitures in cases of rebates and offsets 1895
500.503 Forfeitures in cases of rebates and offsets 1896
500.503 Forfeitures in cases of rebates and offsets 1897
500.503 Forfeitures in cases of rebates and offsets 1899
500.503 Forfeitures in cases of rebates and offsets 1901
500.503 Forfeitures in cases of rebates and offsets 1904
500.503 Forfeitures in cases of rebates and offsets 1906
500.503 Forfeitures in cases of rebates andoffsets 1858
500.503 Forfetures in cases of rebates and offsets 1853
Part 36 Appendix-Glossary Study Area Definition 1837
Part 36 Appendix-glossary Study Area Definition 1873
Part 36 Appendix-glossary Study Area Definition 1874

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Action Page, Inc. File No. 416MS00004

Notice of Apparent Liability for Forfeiture
Penalty for Stations KAA279, KRS659,
and WQZ691 in the Public Land Mobile Service
at Greeley, Fort Collins, and various
other locations in Colorado

NOTICE OF APPARENT LIABILITY FOR FORFETITURE

Adopted: April 11, 1994; Released: April 18, 1994

By the Chief, Mobile Services Division:

1. On March 31, 1989, a stock distribution took place which resulted in a *pro forma* transfer of control of Action Page, Inc. (Action), licensee of Public Land Mobile Stations KAA279, KRS659, and WQZ691 at Greeley, Fort Collins, and various other locations in Colorado. This case involved the transfer of negative control of Action but was *pro forma* because the controlling parties of Action remained unchanged both before and after the transfer. The particulars of the case are as follows.

2. On September 1, 1993, an application for Commission consent to the transfer of control from Richard and Joyce Redfern (the Redferns) to the Shareholders of Action was filed. The application contained an exhibit disclosing the *pro forma* transfer of control, and the parties to the application. A review of the application by the Mobile Services Division disclosed that as a result of a March 31, 1989, stock distribution, the Redferns no longer held 100 percent of Action's voting stock as joint tenants. The stock was redistributed so that, as of March 31, 1989, Richard and Joyce Redfern each held 37.5 percent of Action's voting stock, and the remaining 25 percent voting stock was distributed equally between the Redferns' son, Ron Redfern, and a former employee of Action, Kent Sager. Since that time, further stock distributions have occurred, none of which involved transfers of control, so that the Redferns now each own 41 percent of Action's voting stock (*i.e.*, an 82-percent majority voting block together).[1] Since no party has 50 percent or more of the stock, negative control has been transferred by the stockholders. The Redferns at all times have maintained *de facto* control of Action and, in running Action, have at all times voted their stock together so that actual day-to-day management and control of Action have not changed.

3. The parties did not realize that it was necessary to obtain prior consent for the *pro forma* transfer of control and that upon learning of the requirement, Mr. Redfern requested their Washington counsel to prepare the necessary applications for filing with the Commission.[2]

4. Section 310(d) of the Communications Act provides in relevant part:

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

Similarly, Section 22.39(a) of the Commission's Rules states:

> *Approval required.* Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission.

The March 31, 1989, stock distribution described in paragraph 1, *supra*, constituted an unauthorized *pro forma* transfer of control. Consequently, an apparent violation of Section 310(d) of the Communications Act and Section 22.39(a) of the Commission's Rules has occurred.

5. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter ... shall be liable to the United States for a forfeiture penalty.

We find that the unauthorized *pro forma* transfer of control of Action constitutes willful and repeated conduct within the terms of the statute because the March 31, 1989, stock distribution was made consciously and deliberately and remained unauthorized for more than one day.[3]

6. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), the base forfeiture amount for an unauthorized *pro forma* transfer of control is $5,000. Consistent with this *Policy*

[1] The remaining 18 percent is owned as follows: Ron Redfern owns 11 percent, and Kent Sager owns 7 percent.

[2] Contemporaneously filed with the *pro forma* transfer of control application is a request by the Shareholders of Action for special temporary authority (STA) to continue to operate the three captioned stations pending Commission action on the *pro forma* transfer of control. Commission action pertaining to the *pro forma* transfer of control and the request for STA will be dealt with separately.

[3] Section 312(f)(1) of the Communications Act, 47 U.S.C. §

Statement, we are adjusting the forfeiture downward to $3,500 because Action voluntarily disclosed the unauthorized *pro forma* transfer of control.

7. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, Action Page, Inc., IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Three Thousand Five Hundred Dollars ($3,500) for willful and repeated violations of the aforementioned statutory and rule provisions. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this Notice, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

9. A copy of this Notice is being sent to Action Page, Inc., P.O. Box 5338, Greeley, Colorado 80631.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

312(f)(1), provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.,* 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act, 47 U.S.C. § 312(f)(2), provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Alpha Cellular File No. 416MS0003

Notice of Apparent Liability for Forfeiture Penalty in the Domestic Public Cellular Radio Telecommunications Service on Frequency Block A, in the Indiana 8 - Brown Rural Service Area

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 7, 1994; Released: April 18, 1994

By the Chief, Mobile Services Division:

1. On January 23, 1992, the Commission granted Alpha Cellular (Alpha) authorization to construct facilities at Seymour, Indiana. On March 18, 1993, Southeast Indiana Cellular Telephone Company (Southeast) filed a complaint against Alpha for use of unauthorized Kathrein 740 198 transmit antennas with RFL-2 reflectors. Based upon Southeast's allegations, the Mobile Services Division (MSD) commenced an investigation and requested that Alpha respond to Southeast's allegations.[1]

2. Alpha responded, saying that in late November 1992, it constructed the cell complained of (the Chestnut Ridge cell), that it filed the FCC Form 489 on November 23, 1992, notifying the Commission of completion of construction and, afterward, filed a subsequent Form 489 on December 21, 1992, correcting the cell site's coordinates and supplying FAA clearance for the tower. Alpha further states that AT&T Network Systems (AT&T) designed and constructed the facility and supplied the engineering portion of the Forms 489 for Alpha. AT&T, which designed the cell to include the Kathrein antennas with the reflectors, did not install the necessary reflectors on the Kathrein antennas. Alpha states that the construction began on October 26, 1992, and was completed on or about November 15, 1992. Further, Alpha acknowledges and takes responsibility for using unauthorized antennas and says that the situation was corrected on March 21, 1993, two days after receiving a copy of the complaint from Southeast. Alpha adds that a minor adjustment was made to the antennas' orientation a few days later to ensure compliance with the previously filed Forms 489.

3. Section 301 of the Communications Act, 47 U.S.C. § 301, provides in relevant part:

> No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Similarly, Section 22.3 of the Commission's Rules, 47 C.F.R. § 22.3, states:

> No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

Therefore, because Alpha used unauthorized equipment at the Chestnut Ridge facility, it is in apparent violation of Section 301 of the Communications Act and Section 22.3 of the Commission's Rules.

4. Section 503(b) of the Communications Act, 47 U.S.C. § 503, states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter... shall be liable to the United States for a forfeiture penalty.

[1] In its complaint, Southeast requested revocation of Alpha's license because Alpha misrepresentated to the Commission that it constructed its cell site as specified in its FCC Form 489. The MSD informed Southeast that prior to the filing of its complaint and pursuant to *Algreg Cellular Engineering*, 7 FCC Rcd 8686 (I.D. 1992) (*Initial Revocation Decision), exceptions filed* (Mar. 18, 1992), Alpha's construction permit for the Indiana RSA was revoked. As a result, Southeast's complaint was found to be moot and was dismissed. *See* Letter to E. Greenwald and J. Burgett (counsel for Southeast) from J. Cimko, Chief, MSD (July 15, 1993). That Letter nonetheless stated that the MSD would investigate Southeast's allegations against Alpha to determine what, if any, appropriate action should be taken. Because exceptions were filed within 30 days of the *Initial Revocation Decision* and the Commission did not review the case on its own motion, the *Initial Revocation Decision* did not become effective 50 days after its public release. Thus, Alpha has been operating pending disposition of the filed exceptions. The MSD requested that Alpha provide a written response to Southeast's complaint, a copy of which was enclosed with the MSD's request. *See* Letter to Alpha from J. Cimko, Chief, MSD (July 30,

We find that Alpha's use of unauthorized equipment of the Chestnut Ridge facility constitutes willful and repeated conduct within the terms of the statute[2] because Alpha, by its own admission, used unauthorized omnidirectional antennas instead of using authorized directional antennas.[3]

5. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures,* 8 FCC Rcd 6215 (1993), the base forfeiture amount for use of unauthorized equipment is $20,000. Consistent with the *Policy Statement,* the total forfeiture for which Alpha is apparently liable is $20,000.

6. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, Alpha IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of twenty thousand dollars ($20,000) for willful and repeated violations of the aforementioned statutory and rule provisions. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934.

7. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this Notice, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

8. A copy of this Notice is being sent to Alpha, 11469 Escoba Place, San Diego, California 92127, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

1993).

[2] Section 312(f)(1) of the Communications Act, 47 U.S.C. § 312(f)(1), provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.,* 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act, 47 U.S.C. § 312 (f)(2), provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

[3] Alpha's antennas without the RFL-2 reflectors caused the antennas to transmit in a omnidirectional manner. Installation of the reflectors converted the antennas to directional antennas.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
April 7, 1994

Released: April 18, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Channel 12 of Beaumont, Inc. 1800E
Licensee, KBMT-TV
525 Interstate 10 South
Beaumont, Texas 77701

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars ($10,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules, for repeated violation of the Commission's rule limiting the amount of commercial matter that may be aired during children's programming.

When Congress adopted the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, it required the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming and to consider in its review of television license renewals the extent to which the licensee has met the commercial limits. The Commission adopted policies and regulations to implement Congress' mandate in *Children's Television Programming*, 6 FCC Rcd 2111, *recon. granted in part*, 6 FCC Rcd 5093 (1991). Among the regulations adopted was 47 C.F.R. Section 73.670, which provides that:

> No commercial television broadcast station licensee shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

These commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529 (1991).

On April 1, 1993, you filed an application for renewal of license (FCC Form 303-S) for KBMT-TV, Beaumont, Texas (BRCT-9304014K). You also filed a supplement to FCC Form 303-S which contains questions to determine whether the licensee has complied with the limits on commercial matter as set forth in 47 C.F.R. Section 73.670. In this supplement, you indicated that KBMT-TV had failed to comply with the limitations on commercial matter during children's programming during your last license term.

In Exhibit 3 to your application and in amendments filed on August 19, and December 8, 1993, you revealed that from January 11, 1992, through April 17, 1992, and again on September 12, 1992, KBMT-TV exceeded the commercial limits during children's programming on 40 occasions. These commercial overages were as follows: 150 seconds - two times; 120 seconds - two times; 110 seconds - one time; 90 seconds - nine times; 75 seconds - one time; 70 seconds - two times; 65 seconds - one time; 60 seconds - six times; 30 seconds - eight times; 15 seconds - two times; ten seconds - four times; and five seconds - two times.

You stated that the management of Station KBMT-TV was fully cognizant of the limits on commercial matter that could be aired during children's programming long before those limits went into effect. Moreover, you claim that, prior to January 1, 1992, the station manager met on numerous occasions with the station's traffic manager to discuss the importance of adhering to the commercial limits. Despite subsequent meetings and discussions, the traffic manager apparently misunderstood the station manager's directions and failed to include bartered commercials when counting the total amount of commercial matter carried in children's programming. In addition, the "skim avails" daily reports reviewed by the station manager to monitor compliance with the commercial limits did not contain bartered commercials. You stated, therefore, that the commercial overages were not discovered until the end of the first quarter of 1992 at which time the station manager reviewed the daily program logs prior to certifying compliance with the commercial limits during children's programming. Finally, you claimed that corrective action was undertaken immediately, and that only three inadvertent commercial overages have occurred since that time.

Your record of exceeding the Commission's limits on commercial matter during children's programming on 40 occasions during your license period after these limits became effective, constitutes a repeated rule violation. Accordingly, pursuant to Section 503(b) of the Communications Act, Channel 12 of Beaumont, Inc., is hereby advised of its APPARENT LIABILITY FOR A FORFEITURE of ten thousand dollars ($10,000) for its apparent repeated violation of 47 C.F.R. Section 73.670. The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Communications Act and the guidelines set forth in our *Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), *pet. for review pending sub nom. USTA v. FCC*, No. 93-1526 (D.C. Cir. filed August 23, 1993).

Under these standards, $10,000 is the base forfeiture for violation of our children's television commercialization limits. The 40 occasions on which you exceeded the Commission's limits on commercial matter during children's programming, including 24 overages 60 seconds or longer in length, clearly indicate that initially you did not establish an effective program to monitor compliance with the Commission's commercial limits. When the Commission delayed the effective date of 47 C.F.R. Section 73.670 until January 1, 1992, we stated that, "giving the additional time to broadcasters and cable operators before compliance with the commercial limits is required will have the effect of enabling broadcasters and cable operators to hone their plans to ensure compliance [and], in the context of any enforcement action for violations of the limits, we would be unlikely to be sympathetic to claims of difficulties." *Children's Television Programming*, 6 FCC Rcd at 5530 n.10. You have not proffered any extraordinary transitional

or other difficulties that prevented Station KBMT-TV from complying with the children's advertising limitations during your license period. Indeed, you admit that it was due to a misunderstanding on the part of station staff and a lack of adequate monitoring procedures that you exceeded the commercial limits repeatedly during the first quarter of 1992. The fact that now you have implemented a plan to eliminate future commercial overages does not relieve you of liability for prior violations. *See International Broadcasting Corp.*, 19 FCC 2d 793 (1969). Under these circumstances no upward or downward adjustment to the base forfeiture amount is warranted.

Notwithstanding this action, we find you qualified to remain a Commission licensee and conclude that grant of your application for renewal of license for Station KBMT-TV would serve the public interest. Therefore, your application, BRCT-9304014K, IS HEREBY GRANTED.

With respect to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Enclosure
cc:
Robert B. Jacobi, Esquire

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
April 7, 1994

Released: April 18, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

KCIT Acquisition Company 1800E
Licensee, KCIT(TV)
1585 Schallenberger Road
San Jose, California 95131

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars ($15,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules, for repeated violation of the Commission's rule limiting the amount of commercial matter that may be aired during children's programming.

When Congress adopted the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, it required the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming and to consider in its review of television license renewals the extent to which the licensee has met the commercial limits. The Commission adopted policies and regulations to implement Congress' mandate in *Children's Television Programming*, 6 FCC Rcd 2111, *recon. granted in part*, 6 FCC Rcd 5093 (1991). Among the regulations adopted was 47 C.F.R. Section 73.670, which provides that:

> No commercial television broadcast station licensee shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

These commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529 (1991).

On April 1, 1993, you filed an application for renewal of license (FCC Form 303-S) for KCIT(TV), Amarillo, Texas (BRCT-9304018K). You also filed a supplement to FCC Form 303-S which contains questions to determine whether the licensee has complied with the limits on commercial matter as set forth in 47 C.F.R. Section 73.670. In this supplement, you indicated that KCIT(TV) had complied with the limitations on commercial matter during children's programming during your last license term. On October 28, 1993, you amended your renewal application to state that you had not complied with the commercial limits and provided an explanation of the commercial overages in an attached Exhibit No. 3.

In your amendment you indicated that from January 1992, through October 1992, KCIT(TV) exceeded the commercial limits during children's programming on 75 occasions. Nine of the commercial overages were 90 seconds in length, 13 of the commercial overages were one minute in length, 52 of the commercial overages were 30 seconds in length, and one overage was 18 seconds in length. You indicated that although you formatted your children's programming to comply with the commercial limits, overages still occurred. You stated that some of the commercial overages were caused by last minute "make goods" or by commercial schedule changes which were made after the station's "preemption report" had been prepared. In other situations, you claimed, that you did not realize until later that promotional spots contained references to program sponsors. Finally, you stated that: these commercial overages occurred soon after the commercial limits went into effect; you have a one-person traffic department; and you have now adopted procedures to ensure future compliance.

Your record of exceeding the Commission's limits on commercial matter during children's programming on 75 occasions during your license period after these limits became effective, constitutes a repeated rule violation. Accordingly, pursuant to Section 503(b) of the Communications Act, KCIT Acquisition Company is hereby advised of its APPARENT LIABILITY FOR A FORFEITURE of fifteen thousand dollars ($15,000) for its apparent repeated violation of 47 C.F.R. Section 73.670. The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Communications Act and the guidelines set forth in our *Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), *pet. for review pending sub nom. USTA v. FCC*, No. 93-1526 (D.C. Cir. filed August 23, 1993).

Under these standards, $10,000 is the base forfeiture for violation of our children's television commercialization limits. An upward adjustment of the base forfeiture amount may be warranted under established criteria such as egregious misconduct or when the violation is repeated or continuous. In determining the appropriate forfeiture amount for this violation of the commercial limits during children's programming, we have taken into consideration several factors of particular importance. We have considered the number of instances of commercial overages and the length of each overage. We have also considered the period of time over which such overages occurred. Finally, we have considered whether or not the licensee established an effective program to monitor compliance.

The 75 occasions on which you repeatedly exceeded the Commission's limits on commercial matter during children's programming is a high number of violations. Moreover, all but one of the commercial overages were 30 seconds or more in length. Thus, it appears that a significant amount of excess commercial matter was aired on each of these 74 occasions. By your own admission, initially you did not establish an effective program to monitor compliance with the Commission's commercial limits. When the Commission delayed the effective date of 47 C.F.R. Section 73.670 until January 1, 1992, we stated that, "giving the additional time to broadcasters and cable operators before compliance with the commercial limits is required will have the effect of enabling broadcasters and cable operators to hone their plans to ensure compliance

[and], in the context of any enforcement action for violations of the limits, we would be unlikely to be sympathetic to claims of difficulties." *Children's Television Programming,* 6 FCC Rcd at 5530 n.10. You have not proffered any extraordinary transitional or other difficulties that prevented Station KCIT(TV) from complying with the children's advertising limitations during your license period. Indeed, apparently you did not have a procedure in place for monitoring compliance since you were unaware at the time you filed your renewal application whether you had complied with the Commission's commercial limits. The fact that now you may have implemented a plan to eliminate future commercial overages does not relieve you of liability for prior violations. *See International Broadcasting Corp.,* 19 FCC 2d 793 (1969). Consideration of these factors warrants an upward adjustment of the forfeiture amount.

Notwithstanding this action, we find you qualified to remain a Commission licensee and conclude that grant of your application for renewal of license for Station KCIT(TV) would serve the public interest. Therefore, your application, BRCT-9304018K, IS HEREBY GRANTED.

With respect to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Enclosure
cc: Joseph A. Godles, Esquire

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
April 7, 1994

Released: April 18, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

BSP Broadcasting, Inc. 1800E
Licensee, KJTL-TV
3800 Call Field Rd.
Wichita Falls, Texas 76308

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars ($15,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules, for repeated violation of the Commission's rule limiting the amount of commercial matter that may be aired during children's programming.

When Congress adopted the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, it required the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming and to consider in its review of television license renewals the extent to which the licensee has met the commercial limits. The Commission adopted policies and regulations to implement Congress' mandate in *Children's Television Programming*, 6 FCC Rcd 2111, *recon. granted in part*, 6 FCC Rcd 5093 (1991). Among the regulations adopted was 47 C.F.R. Section 73.670, which provides that:

> No commercial television broadcast station licensee shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

These commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529 (1991).

On April 1, 1993, you filed an application for renewal of license (FCC Form 303-S) for KJTL-TV, Wichita Falls, Texas (BRCT-930401KY). You also filed a supplement to FCC Form 303-S which contains questions to determine whether the licensee has complied with the limits on commercial matter as set forth in 47 C.F.R. Section 73.670. In this supplement, you indicated that KJTL-TV had complied with the limitations on commercial matter during children's programming during your last license term. On October 28, 1993, you amended your renewal application to state that you had not complied with the commercial limits and provided an explanation of the commercial overages in an attached Exhibit No. 3.

In your amendment you indicated that from January 1992, through October 1992, KJTL-TV exceeded the commercial limits during children's programming on 70 occasions. Fourteen of the commercial overages were one minute in length and the other 56 commercial overages were 30 seconds in length. You indicated that although you formatted your children's programming to comply with the commercial limits, overages still occurred. You stated that some of the commercial overages were caused by last minute "make goods" or by commercial schedule changes which were made after the "preemption report" had been prepared. In other situations, you claimed, you did not realize until later that promotional spots contained references to program sponsors. Finally, you stated that: these commercial overages occurred soon after the commercial limits went into effect; you have a one-person traffic department; and you have now adopted procedures to ensure future compliance.

Your record of exceeding the Commission's limits on commercial matter during children's programming on 70 occasions during your license period after these limits became effective, constitutes a repeated rule violation. Accordingly, pursuant to Section 503(b) of the Communications Act, BSP Broadcasting, Inc., is hereby advised of its APPARENT LIABILITY FOR A FORFEITURE of fifteen thousand dollars ($15,000) for its apparent repeated violation of 47 C.F.R. Section 73.670. The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Communications Act and the guidelines set forth in our *Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), *pet. for review pending sub nom. USTA v. FCC*, No. 93-1526 (D.C. Cir. filed August 23, 1993).

Under these standards, $10,000 is the base forfeiture for violation of our children's television commercialization limits. An upward adjustment of the base forfeiture amount may be warranted under established criteria such as egregious misconduct or when the violation is repeated or continuous. In determining the appropriate forfeiture amount for this violation of the commercial limits during children's programming, we have taken into consideration several factors of particular importance. We have considered the number of instances of commercial overages and the length of each overage. We have also considered the period of time over which such overages occurred. Finally, we have considered whether or not the licensee established an effective program to monitor compliance.

The 70 occasions on which you repeatedly exceeded the Commission's limits on commercial matter during children's programming is a high number of violations. Moreover, 14 of these commercial overages were one minute in length and 56 of the commercial overages were 30 seconds in length. Thus, it appears that a significant amount of excess commercial matter was aired on each of these 70 occasions. By your own admission, initially you did not establish an effective program to monitor compliance with the Commission's commercial limits. When the Commission delayed the effective date of 47 C.F.R. Section 73.670 until January 1, 1992, we stated that, "giving the additional time to broadcasters and cable operators before compliance with the commercial limits is required will have the effect of enabling broadcasters and cable operators to hone their plans to ensure compliance [and], in the context of any

enforcement action for violations of the limits, we would be unlikely to be sympathetic to claims of difficulties." *Children's Television Programming,* 6 FCC Rcd at 5530 n.10. You have not proffered any extraordinary transitional or other difficulties that prevented Station KJTL-TV from complying with the children's advertising limitations during your license period. Indeed, apparently you did not have a procedure in place for monitoring compliance since you were unaware at the time you filed your renewal application whether you had complied with the Commission's commercial limits. The fact that now you may have implemented a plan to eliminate future commercial overages does not relieve you of liability for prior violations. *See International Broadcasting Corp.,* 19 FCC 2d 793 (1969). Consideration of these factors warrants an upward adjustment of the forfeiture amount.

Notwithstanding this action, we find you qualified to remain a Commission licensee and conclude that grant of your application for renewal of license for Station KJTL-TV would serve the public interest. Therefore, your application, BRCT-930401KY, IS HEREBY GRANTED.

With respect to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Enclosure
cc:
Joseph A. Godles, Esquire

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
April 7, 1994

Released: April 18, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ramar Communications, Inc. 1800E
Licensee, KJTV(TV)
P.O. Box 3757
Lubbock, Texas 79452

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars ($10,000) pursuant to § 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by § 0.283 of the Commission's Rules, for repeated violation of the Commission's rule limiting the amount of commercial matter that may be aired during children's programming.

In response to the Children's Television Act of 1990, the Commission adopted rules and policies limiting the amount of commercial time which may be aired during children's programming to 10.5 minutes on weekends and 12 minutes on weekdays. 47 C.F.R. § 73.670. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (program-length commercial). *Children's Television Programming*, 6 FCC Rcd 2111, 2118 *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). These commercial limitations became effective on January 1, 1992.

On April 1, 1993, you filed an application for renewal of license (FCC Form 303-S) for KJTV(TV), Lubbock, Texas (BRCT-930401KR). In a supplement to FCC Form 303-S you indicated that KJTV(TV) had failed to comply with the limitations on commercial matter during children's programming on six occasions during your last license term. You stated that three of the instances involved program-length commercials and that the other commercial overages involved two 30-second overages and one 15-second overage.

You stated that the three commercial overages were the result of inadvertent staff errors. For instance, one of the overages occurred after the station had been off the air for nearly one hour. The other two commercial overages occurred because of logging errors. Moreover, you claim that other children's programming aired, at times near the programs that contained commercial overages, were below the commercial limits. In addition, in connection with two of the program-length commercials, you claim that you did not realize at the time of scheduling Playmates commercials during the "Teenage Mutant Ninja Turtles" show that the commercials were for Ninja Turtles products. Finally, you also state that you did not realize in advance that a commercial for Kellogg's cereal aired during a "Tail Spin" show contained a giveaway promotion for Tail Spin characters. You indicate that now you have instituted a series of procedures and cross-checks, including screening of content and review of spot scheduling instructions, in an effort to prevent a recurrence.

Your record of exceeding the Commission's limits on commercial matter during children's programming on six occasions, including three program-length commercials, during your license period after these limits became effective, constitutes a willful and repeated violation of Section 73.670 of the Commission's Rules. Accordingly, pursuant to Section 503(b) of the Communications Act, Ramar Communications, Inc., is hereby advised of its APPARENT LIABILITY FOR A FORFEITURE of ten thousand dollars ($10,000) for its apparent willful and repeated violation of 47 C.F.R. Section 73.670. The amount specified was reached after consideration of the factors set forth in our *Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), *pet. for review pending sub nom. USTA v. FCC*, No. 93-1526 (D.C. Cir. filed August 23, 1993).

Under these standards, $10,000 is the base forfeiture for violation of our children's television commercialization limits. The six occasions on which KJTV(TV) exceeded the commercial limits clearly indicate that initially you did not establish an effective program to monitor compliance with the Commission's commercial limits. When the Commission delayed the effective date of 47 C.F.R. § 73.670 until January 1, 1992, we stated that "giving the additional time to broadcasters and cable operators before compliance with the commercial limits is required will have the effect of enabling broadcasters and cable operators to hone their plans to ensure compliance [and], in the context of any enforcement action for violations of the limits, we would be unlikely to be sympathetic to claims of difficulties." *Children's Television Programming*, 6 FCC Rcd at 5530 n.10. The mitigating circumstances offered by you are not sufficiently extraordinary to justify KJTV(TV)'s commercial overages. Instead, the violations appear to result from the failure to effectively communicate to station staff the need for strict compliance with the commercial limits and the failure to implement adequate review procedures. Under these circumstances no upward or downward adjustment to the base forfeiture amount is warranted.

With respect to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of § 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
April 7, 1994

Released: April 18, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Pueblo Broadcasting Corporation 1800E
Licensee, KXLN-TV
9440 Kirby Drive
Houston, Texas 77054

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars ($15,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules, for repeated violation of the Commission's rule limiting the amount of commercial matter that may be aired during children's programming.

When Congress adopted the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, it required the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming and to consider in its review of television license renewals the extent to which the licensee has met the commercial limits. The Commission adopted policies and regulations to implement Congress' mandate in *Children's Television Programming*, 6 FCC Rcd 2111, *recon. granted in part*, 6 FCC Rcd 5093 (1991). Among the regulations adopted was 47 C.F.R. Section 73.670, which provides that:

> No commercial television broadcast station licensee shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

These commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529 (1991).

On April 1, 1993, you filed an application for renewal of license (FCC Form 303-S) for KXLN-TV, Rosenberg, Texas (BRCT-930401LC). You also filed a supplement to FCC Form 303-S which contains questions to determine whether the licensee has complied with the limits on commercial matter as set forth in 47 C.F.R. Section 73.670. In this supplement, you indicated that KXLN-TV had failed to comply with the limitations on commercial matter during children's programming during your last license term.

In Exhibit 5 to your application, you indicated that from January 1992, through October 1992, KXLN-TV exceeded the commercial limits during children's programming on 28 occasions. These commercial overages ranged from two seconds to five minutes and 45 seconds in length. Twelve of the commercial overages were two minutes in length or longer.

You stated that 19 of the overages occurred in January through May of 1992 because of problems with the formatting of network programs received from Univision. You claim that when the Commission's commercial limits first went into effect, you contacted the network's programming department to make sure that programs were properly formatted to prevent excess commercial matter. Despite assurances that such was the case, you learned in May of 1992, that not all network programs were properly formatted. Your subsequent review of your program logs revealed 19 commercial overages. You stated that you have now adopted detailed procedures to review commercial matter in children's programming in advance to ensure compliance with the limits.

You stated that five other overages occurred when you were unable to determine in advance the exact placement of commercial matter for certain network programming which was aired in two different clock hours. You claim that although the total amount of commercial matter during the program was within the commercial limits, the amount of commercial matter within certain clock hours exceeded the limits. After you realized that the commercial limits applied to clock hours, and not program segments, you adopted procedures to ensure that you would remain in compliance with the commercial limits no matter how the commercial time was distributed within a program. Finally, you stated that four other commercial overages were caused by staff errors. You indicated that the responsible staff has been admonished and all staff has been instructed on the procedures to follow to ensure future compliance with the commercial limits.

Your record of exceeding the Commission's limits on commercial matter during children's programming on 28 occasions during your license period after these limits became effective, constitutes a repeated rule violation. Accordingly, pursuant to Section 503(b) of the Communications Act, Pueblo Broadcasting Corporation is hereby advised of its APPARENT LIABILITY FOR A FORFEITURE of fifteen thousand dollars ($15,000) for its apparent repeated violation of 47 C.F.R. Section 73.670. The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Communications Act and the guidelines set forth in our *Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), *pet. for review pending sub nom. USTA v. FCC*, No. 93-1526 (D.C. Cir. filed August 23, 1993).

Under these standards, $10,000 is the base forfeiture for violation of our children's television commercialization limits. An upward adjustment of the base forfeiture amount may be warranted under established criteria such as egregious misconduct or when the violation is repeated or continuous. In determining the appropriate forfeiture amount for this violation of the commercial limits during children's programming, we have taken into consideration several factors of particular importance. We have considered the number of instances of commercial overages and the length of each overage. We have also considered the

period of time over which such overages occurred. Finally, we have considered whether or not the licensee established an effective program to monitor compliance.

The 28 occasions on which you repeatedly exceeded the Commission's limits on commercial matter during children's programming is a high number of violations. Moreover, twelve of these commercial overages were two minutes in length, or longer. Thus, it appears that a significant amount of excess commercial matter was aired on each of these twelve occasions. By your own admission, initially you did not establish an effective program to monitor compliance with the Commission's commercial limits. When the Commission delayed the effective date of 47 C.F.R. Section 73.670 until January 1, 1992, we stated that, "giving the additional time to broadcasters and cable operators before compliance with the commercial limits is required will have the effect of enabling broadcasters and cable operators to hone their plans to ensure compliance [and], in the context of any enforcement action for violations of the limits, we would be unlikely to be sympathetic to claims of difficulties." *Children's Television Programming,* 6 FCC Rcd at 5530 n.10. You have not proffered any extraordinary transitional or other difficulties that prevented Station KXLN-TV from complying with the children's advertising limitations during your license period. Indeed, you admit that a failure to monitor compliance with commercial limits caused the repeated violations. Moreover, you did not establish effective compliance procedures until many significant commercial overages had occurred. The fact that now you may have implemented a plan to eliminate future commercial overages does not relieve you of liability for prior violations. *See International Broadcasting Corp.,* 19 FCC 2d 793 (1969). Consideration of these factors warrants an upward adjustment of the forfeiture amount.

Notwithstanding this action, we find you qualified to remain a Commission licensee and conclude that grant of your application for renewal of license for Station KXLN-TV would serve the public interest. Therefore, your application, BRCT-930401LC, IS HEREBY GRANTED.

With respect to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Enclosure
cc:
Howard A. Topel, Esquire

Before the
Federal Communications Commission
Washington, D.C. 20554

CORRECTED

MM Docket No. 92-122

In re Application of

CALVARY EDUCATIONAL BROADCASTING NETWORK, INC. File No. BRED-891103UA

For Renewal of License
of Station KOKS(FM)
Poplar Bluff, Missouri

MEMORANDUM OPINION AND ORDER

Adopted: April 6, 1994; Released: April 18, 1994

By the Review Board: MARINO (Chairman), BLUMENTHAL and GREENE.

1. Pursuant to our Memorandum Opinion and *Order* (*MO&O*),[1] released February 3, 1994, the Board has before it (1) the Response Of Calvary Educational Broadcasting, filed March 7, 1994;[2] and (2) the Mass Media Bureau's Comments On [Calvary's] Response, filed March 22, 1994. Upon examination of the foregoing pleadings, and for the reasons outlined below, the Board is constrained to invite a further reply to the Bureau's March 22 Comments.

BACKGROUND

2. The history of this proceeding is fully set out in the extensive *Initial Decision*, 8 FCC Rcd 4789 (Chief ALJ 1993) (*I.D.*), and encapsulated in our prior *MO&O*, both of which are incorporated by reference. Suffice it for instant purposes that, no sooner had it begun transmitting on November 6, 1988, both the new station (KOKS) and the FCC began receiving complaints of "blanketing interference" to other radio and television signals from individuals who lived within approximately 2.5 miles of the new FM station. That station, including tower and transmitter, had been built on the residence/property of Calvary's principals Mr. and Mrs. Donald Stewart. The complaints, which eventually numbered more than 200, were received from individuals apparently entitled to abatement -- at the licensee's expense -- of "blanketing interference" to certain types of pre-existing signals afforded protection (albeit subject to limitations) under Sec. 73.318 of the Commission's rules, 47 CFR § 73.318.[3] *See, e.g., Entertainment Communications, Inc.*, FCC 94-56, released March 22, 1994.

3. While actively abetted by FCC Field Office advice and a local broadcast engineer, Calvary readily admitted at hearing that it had neither the technical nor financial resources to effect complete compliance with § 73.318. Indeed, once this case was designated for hearing in 1992, Calvary ceased all efforts to come into accord with the rule; and, so far as we are aware, no further efforts have been made to date. Notwithstanding, the *I.D.* granted KOKS a short term (1-year) renewal, conditioned upon a prescribed course of compliance measures. Calvary filed no exceptions; the Bureau took many exceptions, particularly to the Chief ALJ's conclusion that Calvary had not misrepresented or lacked candor in periodically reporting that it had satisfied numerous, specific interference complaints that had been lodged.

4. Upon its review of the record and the pleadings, the Board found that *even if* Calvary were to be absolved under the "truthfulness" issues, we were in agreement with the Bureau that renewal would not serve the public interest in the absence of evidence that Calvary now had the resources to come into compliance with the rule, and in the full manner implied in the *Hearing Designation Order*. Thus, our prior *MO&O* required from Calvary two discrete showings, to wit:

> (1) a written showing of the measures it proposes to take to come into full compliance with § 73.318, including a detailed time schedule of proposed actions; and (2) a written showing of the licensee's finances sufficient to demonstrate that it possesses the resources necessary to achieve full compliance with § 73.318.

CURRENT PLEADINGS

5. *Calvary's Response.* The licensee's instant pleading again concedes that, from the very start, the Stewarts were sorely bereft of the financial resources necessary to comply

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[1] That prior *MO&O* is reported at 9 FCC Rcd 575 (Rev. Bd. 1994).

[2] Without objection from the Commission's Mass Media Bureau, the Board granted Calvary's February 17, 1994 Motion For Extension Of Time to file its Response to our prior *MO&O*. (Letter to Joseph E. Dunne, III from Allan Sacks, Chief for Law, February 23, 1994.)

[3] A major misunderstanding (or disagreement) suffusing this entire issue of "blanketing interference" has been, from the out set, whether § 73.318 here protected the signal of Channel 6, emanating from WPSD-TV, Paducah, Kentucky, a distant signal to which many (perhaps the majority) of the KOKS interference complaints were directed. Calvary had claimed, in its exceptions to the *I.D.*, that it was not until the issuance of the *Hearing Designation Order*, 7 FCC Rcd 4037 (1992), that it was advised that the rule required protection -- even beyond the Grade B contour -- of that Paducah TV signal by KOKS. Not only did the Bureau not dispute that assertion, the underlying record holds an April 1990 epistle to KOKS from the FCC that states the agency has made "no final determination in this [KOKS] case concerning the types of service interruptions that fall within the ambit of the Commission's rules, 47 CFR § 73.318." However, as indicated in our prior *MO&O* (at ¶ 10), the full Commission issued the controlling *Designation Order;* the Board, therefore, believes itself bound by that *Order's* inclusion of the signal of WPSD-TV in the ambit of the pertinent rule.

with § 73.318.[4] They also repeat that they "were ignorant of the technical rules involved in blanketing interference, and how difficult it would be to resolve them." Response at 16. (Indeed, when they put the station on the air, they did not possess -- *as compulsory* -- even a copy of the FCC's rules. *See MO&O* at ¶ 3.) The licensee pleads:

> Calvary is a non-profit organization. It depends on the contributions of its supporters for its income. Since we began operating the station we have always remembered that, and we have tried to be good stewards of the donations entrusted to us. We have tried to be good stewards by not spending the donations sent to us if we didn't have to. This proceeding has shown us that, in this instance, being a good steward means satisfying the complaint *if the costs are not outlandish. Good stewardship means doing whatever is necessary to keep the station's license.*

Response at 16 (emphasis added).[5]

6. Nevertheless, Calvary has here submitted several exhibits that propose the equipment it might require for its "Compliance Program," and the engineering assistance it hopes to employ to effect that program. Response at 1-4. Its "best" estimate of the cost of such a program is $45,642.50. *Id.*, at 4. Additionally, it claims it will mail to "[e]very complainant noted as being within the blanketing contour in the Commission's October, 1990 letter" its own new missive asking as to any KOKS-caused interference and offering to resolve such, to the degree required by the rule. *See id.*, at 7-9.[6] "Implementing the [KOKS] Compliance Program will take at least 120 days, and that will be rushing it." Response at 12.

7. As for the financing of the above-described program, Calvary proffers a bank letter of February 25, 1994 agreeing to increase an existing $18,233 Stewart loan by an additional $50,000 (altogether $68,233), provided that (1) the Stewarts collateralize any such loan with a deed of trust on the real estate upon which KOKS is located and a second deed of trust on their house, as well as on all KOKS equipment; and (2) the Stewarts also show proof of Title Insurance and the absence any liens on the foregoing assets. *See* Response, Exh. E (Peoples Bank of Wayne County). In that regard, it is asserted that "Calvary has no current obligations in excess of $500," Response at 4; the Stewarts hope to pay off the loan(s) with listener donations, *see id.*, at 16.

8. *Bureau Comments.* Without withdrawing any of its original exceptions to the *I.D.*, Comments at 2 n.2, the Bureau counters that although -- "on their face" -- Calvary's technical proposals seem sufficient, the Bureau perceives several critical flaws in the licensee's response. First, whereas Calvary vows to address the interference complaints "noted... in the Commission's October 1990 letter" (*see supra* ¶ 6), the Bureau infers that Calvary's estimate of remedial treatment of "no more than 120 homes" does not appear to contemplate elimination of interference to the reception of TV Channel 6, and hence finds the licensee's proposal inadequate, especially anent the cost estimates. Second, the Bureau complains that Calvary has not made sufficient provision to reimburse complainants who undertook to eliminate the interference from KOKS at their own expense. But, third, the Bureau interposes a transcendant obstacle: while it suffers, *arguendo*, Calvary's assertion that it has no current financial obligations in excess of $500, the Bureau has appended a farrago of private as well as local government liens and judgments totaling tens of thousands of dollars against the Stewarts and/or their farming businesses. Moreover, the Bureau's appendix reveals a number of recorded "Notice of Federal Tax Lien[s]," the latest dated January 9, 1994; these federal liens alone total over $300,000. *See* Comments, Attachment B. Withal, "the Bureau believes that the existence of the federal tax liens is enough of a threat against their home to cast doubt on Calvary's ability to carry out its compliance program." Comments at 7.[7] In light of its observations, the Bureau repeats its call for a denial of license renewal. *Id.*, at 8.

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[4] Calvary states:

> Since the station went on the air, the station's financial resources have been very limited, we have never had much cash on hand to deal with these problems. We were always looking at a bare cupboard and hoping that contributions would come in to cover expenses.

Response at 16. It further posits (*id.*, at 18):

> We also believe that even if the Mass Media Bureau agrees that our Compliance Program is adequate, it will probably also question why Calvary didn't adopt such a program sooner. The answers to that question are numerous. The first is obvious and is noted above--Calvary has been chronically starved for funds.

[5] In that same vein, it later laments:

> Calvary, when the its [sic] application was designated for hearing, was faced with the choice of either defending its license against charges that it misrepresented facts to the Commission, as well as didn't comply with the blanketing rule, or trying to comply with the blanketing rule. It did not have the financial or personnel resources to do both. At best it would have been condemned to the worst of all possible worlds -- a weak defense and a marginal and ineffective compliance program. Calvary should not be condemned for not doing what it clearly did not have the resources or capacity to do.

Id., at 21.

[6] Calvary also believes that cable service "seems to cure" TV interference; it, thus, promises to pay any complainant whose TV interference cannot be eliminated with the equipment proposed in its general "compliance program" for "a year's subscription to the basic tier of cable service, plus any installation charges." *See* Response at 9-11. In rejoinder to the Bureau's position (transmitted informally, we presume) that any cable subscription payments should not be limited to 1 year, Calvary objects to an open-ended commitment until that complainant has "died or moved." *Compare id.*, at 10-11 *with* Comments at 5-6.

[7] In view of the plethora, and substantial dollar amount, of the liens and judgments the Bureau itself has purposively supplied, it is unclear why the Bureau says that Calvary's claim of no current obligations in excess of $500 "may literally be true." *See* Comments at 7. We trust that the reply that we herein below solicit from Calvary will clarify this matter.

DISCUSSION

9. Calvary is correct that our *MO&O* did not provide "an opportunity to respond to the Mass Media Bureau's comments...." Response at 15. This may have been improvident, but the Board could not anticipate that the pleadings we sought would disclose the significant and material factual questions raised as a result. Since we did not invite a reply to any Bureau comments to Calvary's response, we must now demand a reply that fully answers the three basic matters interjected by the Bureau. Calvary must reply, directly and unambiguously, to the questions of whether (1) its "Compliance Program" is intended to satisfy *all* covered first-year complaints, including those related to TV Channel 6; (2) its "Program" is intended to reimburse those complainants who were entitled to such under § 73.318; and (3) its estimate of $45,642 was intended to encompass those two items, and confirm where in its submitted "Program" these were delineated (if they were). Further, inasmuch as Calvary's entire "Program," as here presented, depends on a $50,000 increase on an extant bank loan which, in turn, is contingent on the absence of liens on *all* of the specified Stewart assets, Calvary's reply must include (1) evidence of the status of each and every lien and judgment appending Bureau Comments, Attachment B (as well as any other similar potential encumbrances); and (2) a written declaration from Calvary's proposed lender listing -- specifically by claimant, date and dollar amount -- any recorded liens and judgments and stipulating that any such claims would have no impact whatever on the immediate $50,000 loan to Calvary.[8] Again, despite the licensee's multiple admissions that, *ab initio*, it did not have the finances to meet the Commission's technical rules, no financial issue, *per se*, has been added or is here being tried.[9] Our sole instant purpose is to determine, "truthfulness" issues aside for the moment, whether a short-term renewal (such as that proposed in the Chief ALJ's *I.D.*) would likely result in expeditious compliance with the Commission's technical rules, all of the unique circumstances here considered. Inasmuch as Calvary's prime defense for noncompliance is, and from 1988 forward has been, its lack of finances, then the *technical* issue inextricably turns on the licencee's present fiscal resources.

10. ACCORDINGLY, IT IS ORDERED That Calvary Educational Broadcasting Network, Inc. SHALL FILE within twenty (20) days of the release of this *Memorandum Opinion and Order*, the written documentation specified in paragraph 9 above.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

[8] Although, as we reiterate below, there is no financial isssue against Calvary, we do note in passing recent cases where, despite outstanding liens or judgments against an applicant, the Commission declined to add a financial issue because the proposed lender evinced both awareness of the obligations *and* a reaffirmation of its earlier commitment. *See, e.g., Eve Ackerman*, 8 FCC Rcd 4205, 4206 (1993); *Liberty Productions*, 8 FCC Rcd 4264, 4265 (1993). *Compare, Ackerman* at 4206 n.9 (citing cases where issue added when liens and/or judgments were of major magnitude, *i.e.*, $200,000 and above). *Compare also Capitol City Broadcasting Co.*, 8 FCC Rcd 1726, 1737 (Rev. Bd. 1993)(concurring statement concerning larger policy regarding substantial federal tax liens against applicant) *with id.*, 8 FCC Rcd 8478 (1993)(case remanded on other financial issue based on purported real estate value financing of the station).

[9] The Commission's applicable financial standard, implementing 47 U.S.C. § 308(b), is that a license applicant have "sufficient capital to construct the station and then operate the station for 90 days...." *See Financial Qualifications Standards*, 72 FCC 2d 784 (1979). Presumably, Calvary made the requisite "showing" when it applied. *But cf.* 47 U.S.C. § 312(a)(2) (Comm'n can revoke license "because of conditions... which would warrant it in refusing to grant a license or permit on an original application.")

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 19, 1994

UNITED TELE. CO. OF SOUTHCENTRAL KANSAS, INC., SOUTH CENTRAL TELE. ASSOC., INC., AND SOUTH CENTRAL TELECOMM. OF KIOWA, INC. FILED A JOINT PETITION FOR WAIVER OF STUDY AREA DEFINITION (PART 36 APPENDIX-GLOSSARY) AND OF SECTIONS 61.41 AND 69.3(e) OF THE COMMISSION'S RULES AAD 94-33

Comment Date: May 4, 1994
Reply Date: May 18, 1994

On March 25, 1994, United Telephone Company of Southcentral Kansas, Inc. (United), South Central Telephone Association, Inc. (SCTA), and South Central Telecommunications of Kiowa, Inc. (South Central) filed a joint petition for waiver of the definition of "study area" as set forth in the Appendix-Glossary of Part 36 of the Commission's rules. This waiver would allow the parties to reflect the changes in their study area boundaries that would result from the sale from United to these parties of one rural exchange in Kansas. United, STCA, and South Central also seek waivers of Section 61.41 of the price cap rules, 47 C.F.R. § 61.41, and, if necessary, Section 69.3(e), 47 C.F.R. § 69.3(e), to exempt them from the price cap "all or nothing" rule and allow them to continue to operate as cost companies in the NECA common line and traffic sensitive pools. The parties state that this transaction is also pending before the Kansas Corporation Commission.

Interested persons may file comments on this petition no later than **May 4, 1994**. Replies may be filed by **May 18, 1994**. Comments should reference AAD 94-33. An original and four (4) copies of each pleading should be sent to the Federal Communications Commission, Secretary, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. Four (4) copies of each pleading should also be sent to Adrian Wright, Common Carrier Bureau, 2000 L Street, N.W., Room 812, Washington, D.C. 20554, and to International Transcription Service (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800. Copies are available for public inspection and copying in the Accounting and Audits Division's public reference room, 2000 L Street, N.W., Room 812, Washington D.C.; copies are also available from ITS.

For further information contact Adrian Wright at (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 93-5

In the Matter of

Elimination or Revision of Certain Reporting Requirements under Part 43 of the Commission's Rules, Reports of Communication Common Carriers and Certain Affiliates.

REPORT AND ORDER

Adopted: April 7, 1994; Released: April 20, 1994

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. In a Notice of Proposed Rulemaking (*Notice*),[1] released February 2, 1993, we proposed to amend Part 43 of our Rules by eliminating Sections 43.42, Reports on pensions and benefits.[2] We also proposed to revise Section 43.21(c), Reports of carriers and certain affiliates,[3] by raising the reporting threshold from $2.5 million to $100 million for holding companies so that only holding companies that control communications common carriers with $100 million in annual operating revenues would have to file the Annual Report Form 10-K (Form 10-K)[4] with the Commission. We invited comments on these proposals and sought suggestions on alternative thresholds for filing the Form 10-K. Five parties filed comments.[5] For the reasons explained below we adopt both our proposal to eliminate the requirement that common carriers file pension and benefit documents and data and our proposal to raise the reporting requirement's revenue threshold from $2.5 million to $100 million.

2. This proceeding was initiated by the Commission as a part of our review of reporting requirements to determine those reports which are no longer necessary or should be modified to meet our current regulatory needs. The changes we adopt in this proceeding will result in savings to the public by reducing industry reporting burdens and to the Commission by reducing the cost of processing the filings and maintaining them in storage.

II. COMMENT AND DISCUSSION

A. Elimination of Pension and Benefits Data Filing

3. In our *Notice* we proposed to delete Section 43.42 from our Rules and thus eliminate the requirement that communications common carriers with annual revenues of $100 million or more file with this Commission copies, or detailed descriptions, of their pension and benefits plans, along with other documents and details related to such plans. All of the commenting parties support the elimination of these pension and benefits data filing requirements.

4. As we noted in our *Notice*, our filing requirements have remained substantially unchanged for more than 20 years.[6] There have, however, been substantial changes in both the laws that provide for the oversight of pension plans and the generally accepted accounting principles applicable to them. These changes, such as the Employee Retirement Income Securities Act (ERISA)[7] requirements enforced by the Internal Revenue Service, the Department of Labor and the Pension Benefit Guarantee Corporation, and the generally accepted accounting principles issued by Financial Accounting Standards Board[8] have brought about a greater degree of uniformity in the process of estimating and accounting for pension and benefits costs. Because the pension expense currently included in the carriers' accounts are now determined on a more consistent basis, there is no need to require carriers to file the underlying details of their pension and benefits plans. Indeed, we can discharge our oversight responsibility in this area using the pension data currently being reported in the Automated Reporting and Management Information Systems (ARMIS) USOA Report 43-02, Table VIII, Pension Cost, and, as necessary, requesting specific data from the carriers. Therefore, we adopt our proposal to eliminate Section 43.42 of our Rules.

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[1] Elimination or Revision of Certain Reporting Requirements under Part 43 of the Commission's Rules, Reports of Communications Common Carriers and Certain Affiliates, *Notice of Proposed Rulemaking*, CC Docket No. 93-5, 8 FCC Rcd 738 (1993) (*Notice*).

[2] 47 C.F.R. §43.42.

[3] 47 C.F.R. §43.21(c).

[4] Form 10-K is a Securities and Exchange Commission report containing annual financial statements and other financial data and is required to be filed by certain companies whose stock is publicly traded.

[5] Comments were received from the United States Telephone Association (USTA); BellSouth Telecommunications, Inc. (BellSouth); GTE Service Corporation, (GTE); the United and Central Telephone Companies (United/Central); and Pacific Bell and Nevada Bell (the Pacific Companies). No reply comments were received.

[6] *Notice*, 8 FCC Rcd at paras. 4-8.

[7] In 1974, Congress passed ERISA which established standards of conduct for pension and welfare benefits plans and had a substantial impact on the funding and administration of such plans. ERISA is now the principal legislation governing private pension funds. The ERISA rules require that plan assets be held in trust under stringent fiduciary standards. The rules also provide standards for transactions between pension plan funds and employers.

[8] The FASB is the authoritative standard setting body for accounting practices that are used in the American business community. The FASB issued Statements of Financial Accounting Standards No. 87, Employers' Accounting for Pensions, in 1985; Statements of Financial Accounting Standards No. 88, Employers' Accounting for Settlements and Curtailments of Defined Benefit Pension Plans and for Termination Benefits, in 1985; and Statements of Financial Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, in 1990.

B. Revenue Threshold for Filing Annual Report Form 10-K.

5. Section 43.21(c) requires any company, not itself a communication common carrier, which directly or indirectly controls any communication common carrier with annual operating revenues in excess of $2.5 million to file annually with the Commission two complete copies of any annual report Form 10-K filed with the Securities and Exchange Commission. We proposed to amend Section 43.21(c) by raising the specified reporting threshold for companies controlling communications common carriers from $2.5 million to $100 million. This revision would make the reporting threshold in Section 43.21(c) consistent with other Part 43 reporting. All parties filing comments support our proposal not only for the consistency it would create, but because it would reduce the burden on smaller companies and produce savings beneficial to the Commission and the public.

6. We also invited comments on whether we should adopt a revenue threshold, other than the $100 million threshold we proposed, for filing Form 10-K with this Commission. BellSouth supports the $100 million threshold but suggests a higher threshold, such as $500 million in annual revenues, for all of the reports required by Part 43 of the Commission's Rules.[9] We reject BellSouth's suggestion that we raise the reporting threshold to $500 million for all the reports required by Part 43 of our Rules. Part 43 contains numerous other reporting requirements, such as the Annual Report Form M and the ARMIS filing requirements. Not only is BellSouth's suggestion outside the scope of our *Notice*, but also BellSouth failed to offer any justification for its suggested $500 million reporting threshold. We believe that the reporting threshold of $100 million in annual operating revenues will make the Section 43.21(c) requirements consistent with other Part 43 reporting requirements for communications common carriers. We find no reason at this time to change the reporting threshold to a higher amount. Therefore, we amend Section 43.21(c) by incorporating our proposed threshold of $100 million.

III. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that pursuant to Sections 4, 218, 219, 220 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 218, 219, 220, and 303, Part 43 of the Commission's Rules, 47 C.F.R. Part 43, IS AMENDED as set forth in the Appendix hereto, effective 90 days from the date a summary of this Report and Order is published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

Part 43 of Title 47 of the CFR is amended as follows:

Part 43 - Reports of communication common carriers and certain affiliates.

1. The authority citation for Part 43 continues to read as follows:

Authority: Sec 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 220, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Paragraph (c) of Section 43.21 is revised to read as follows:

43.21 Annual reports of carriers and certain affiliates.

* * * * *

(c)Each company, not itself a communication common carrier, that directly or indirectly controls any communication common carrier that has annual operating revenues of $100 million or more shall file annually with the Commission, not later than the date prescribed by the Securities and Exchange Commission for its purposes, two complete copies of any annual report Forms 10-K (or any superseding form) filed with that Commission.

* * * * *

3. Section 43.42 is removed.

[9] BellSouth Comments at p. 2-3.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CATALINA TRANSMISSION CORP. File No. I-T-C-94-083

Application for authority pursuant to Section 214 of the Communications Act of 1934, as amended, and Section 63.01 of the Commission's Rules to extend existing services to transborder locations using U.S. domestic and non-U.S. satellites

ORDER AND AUTHORIZATION

Adopted: March 7, 1994; Released: April 20, 1994

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed by Catalina Transmission Corp. (Catalina) pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity require its grant.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-083 IS GRANTED and Catalina is authorized to establish channels of communications between appropriately licenced U.S. earth stations and various transborder locations via U.S. domestic satellites and non-U.S. satellites which have been consulted pursuant to Article XIV(d) of the INTELSAT Agreement.

3. IT IS FURTHER ORDERED that the service authorized herein is limited to those countries that have been consulted under Article XIV(d) of the INTELSAT Agreement.

4. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

5. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PCI COMMUNICATIONS, INC. File No. CSG-93-147-P/L

Application for Authority to Construct and Operate an International Earth Station located at Agana, Guam

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: March 16, 1994; Released: April 20, 1994

By the Chief, International Facilities Division:

1. The Commission has under consideration an application filed on July 30, 1993, by PCI Communications, Inc. (PCI), pursuant to Sections 304, 308, and 309 of the Communications Act of 1934, as amended, Sections 102, 201 and 210 of the Communication Satellite Act of 1962 (Satellite Act), as amended, and the Earth Station Modification Order,[1] requesting authority to operate a multi-purpose INTELSAT international earth station at Agana, Guam. The application was placed on public notice on August 11, 1993. MCI Telecommunications Corporation (MCI) filed a petition to condition any grant of PCI's application and PCI filed a response. MCI submitted a further response to PCI's comments.[2]

I. The Application

2. PCI proposes to construct and operate a new 5-meter transmit/receive (C-band) international fixed earth station at Agana, Guam communicating with INTELSAT Pacific Ocean Region (POR) satellites in the arc from 68^0 to 190^0 W.L. for the provision of switched voice, video and private line services.[3] The proposed earth station facility will employ Quadraphase Shift Keying (QPSK) to transmit and receive digital signals.[4] PCI's services would directly compete with the services that MCI provides through its earth station facilities at Pulantat, Guam.

II. Positions of the Parties

3. MCI's petition requests that the Commission determine whether to require PCI to provide nondiscriminatory access to authorized users as a condition of any authorization of PCI to construct and operate the subject earth station. MCI notes that it is the licensee of three earth stations on Guam and that the earth station licenses require it to provide nondiscriminatory access to these earth stations. This requirement is based on Section 201 (c)(2) of the Satellite Act which provides that the Commission may take steps to ensure equitable and nondiscriminatory access to the communications satellite system. MCI correctly notes that these conditions applied to previous licenses in an environment devoid of competition and were ultimately imposed on MCI when it acquired the earth stations. For example, MCI became the owner of the Pulantat-1 earth station and was deemed dominant based on the Commission's conclusion that the station's previous owner (Comsat) had been dominant in the provision of multi-purpose earth station services since "multi-purpose earth station service had no easily substitutable services." MCI notes that when RCA Global Communications, Inc. (RCA) became sole owner of the Pulantat-2 earth station, it was required to provide equitable, non-discriminatory access to the earth station because RCA faced no effective competition in the provision of earth station services on Guam and was classified as dominant for those services.[5] Similarly, when MCI International, Inc. (MCII) applied for authority to construct and operate a third multi-purpose earth station at Pulantat (Pulantat-3), the Commission, noting that MCII was dominant, required it to provide access to IDR service on a tariffed, non-discriminatory basis to all authorized users under just and reasonable charges.

4. In the context of PCI's application, MCI believes that the Commission should determine PCI's regulatory status. If the Commission decides that PCI is non-dominant, MCI asserts that the Commission should determine whether the requirement of Section 201(c)(2) of the Satellite Act applies to PCI. At the same time, MCI believes the Commission should indicate whether it is justifiable to continue to classify MCI as dominant in the provision of earth station services on Guam and whether it is justifiable to retain any conditions on MCI's Guam licenses except as required by Section 201(c)(2). Finally, MCI notes that, in light of PCI's

[1] Modification of Policy on Ownership and Operations of U.S. Earth Stations that Operate with the INTELSAT Global Communication Satellite System, Report and Order, 100 FCC 2d 250 (1984)(Earth Station Modification Order).

[2] On September 10, 1993, MCI Telecommunication Corporation (MCI) submitted a petition to condition the authorization of PCI's application or consider a request by MCI to remove the conditions presently imposed on MCI's earth station operations in Guam. On September 28, 1993, PCI Communication, Inc. filed a request to accept late-filed pleading in response to the comments of MCI's. PCI's Response to Comments was accepted on September 29, 1993. On October 8, 1993, MCI submitted a "Reply to Comments" filed by PCI on September 28, 1993.

[3] The Commission amended Section 25.113 to eliminate the requirement of a construction permit to construct a station of this type, effective June 27, 1991, 6 FCC Rcd 2806, 2809 and 2817 (1991).

[4] On October 6, 1993, Commission staff requested clarification and correction of the technical portion of the application by October 21, 1993. On October 21, PCI requested and was granted an extension until November 3, 1993, in which to clarify and make corrections to the application. On October 21, 1993, an amendment was filed on behalf of PCI. On October 26, 1993, the amendment was found to be unacceptable for filing and returned pursuant to Section 25.112 of the Commission rules. On October 28, 1993, PCI made additional corrections and resubmitted the application for filing. On November 18, 1993, in conjunction with application File No. CSG-93-148-P/L, PCI submitted clarification of the technical portion of its application.

[5] RCA Global Communications, Inc., 3 FCC Rcd 2814 (1988). The Pulantat-2 earth station was transferred to MCI in 1988.

request, it will be seeking removal of the nondiscriminatory access conditions in its earth station licenses. Before making the request, however, MCI states that it would be desirable if the Commission indicated the standard it would employ in reviewing such a request.

5. PCI does not comment on whether nondiscriminatory access conditions should be placed on its earth station license. Rather, PCI argues that MCI has failed to comply with Section 25.154 (a)(4) of the Commission's rules, which provides that petitions to deny or comments on an earth station application must contain specific allegations of fact to support the specific relief requested, and which shall be sufficient to demonstrate that the application would be prima facie inconsistent with the public interest. PCI asserts that MCI does not challenge PCI's basic qualifications to hold an international earth station license, nor does it allege or demonstrate that a grant of its application would be inconsistent with the public interest. PCI alleges that MCI is using PCI's application as an opportunity to seek the removal of the restrictions imposed on its own earth station authorization pursuant to prior Commission rulings.

III. DISCUSSION

6. Upon consideration of the subject application, we find that the present and future public convenience and necessity would be served by authorizing PCI to construct and operate the subject earth station at Agana, Guam. We further conclude that, based on the considerations set forth in the Commission's *International Competitive Carrier* decision,[6] PCI should be classified as non-dominant since it is a relatively new entrant in the Guam earth station services market and therefore does not have sufficient market power to justify classification as a dominant carrier.

7. Although we find that PCI is non-dominant in the provision of earth station services, we nonetheless determine that PCI should be subject to the condition set forth in Section 201(c)(2) of the Satellite Act, *i.e.*, that it provide equitable and non-discriminatory access to all authorized users. Section 201(c)(2) of the Satellite Act requires the Commission to ensure that all authorized users have equitable and nondiscriminatory access to international satellite and earth station services. One way the Commission has sought to ensure such equitable access has been through the promotion of a competitive market for satellite and earth station services. In furtherance of that policy, the Commission has long required telecommunications common carriers to interconnect with other common carriers.

8. Until this authorization, earth station service on Guam has been offered only by MCI. The authorization of a second entrant, PCI, to provide a multi-purpose earth station should help reduce concentration in the Guam market but does not itself guarantee the creation of a fully competitive market for satellite services. Rather, until we see the effects of increased competition, we believe the public interest will be best served by applying to this authorization the same condition we have previously applied to MCI's authorizations.

9. We do not believe that authorization of a second earth station provider under current circumstances warrants either a review of MCI's dominant status or elimination of the non-discriminatory access conditions in its licenses. The mere fact that a second competitor is entering the market does not provide evidence that MCI is no longer dominant in the provision of earth station services on Guam or that access conditions should no longer apply. The success of PCI in gaining market share in the years to come is clearly more relevant to a determination of MCI's dominant status than PCI's initial entry into the market. However, MCI is free at any time to file an appropriate request to revisit its regulatory status, based on considerations set forth in the *International Competitive Carrier* decision.

IV. CONCLUSION/ORDERING CLAUSES

10. In conclusion, we find that the grant of PCI's application to construct and operate an international multi-purpose earth station located at Agana, Guam, will serve the public interest, convenience and necessity. However, to ensure that all authorized users have equitable access to services, we will require PCI to provide equitable and nondiscriminatory access to the subject earth station.

11. Accordingly, IT IS ORDERED, pursuant to Section 309 of the Communication Act of 1934, as amended, and Section 201(c) of the Communication Satellite Act of 1962, as amended, that application File No. CSG-93-147-P/L IS GRANTED and PCI is authorized to construct and operate an international multi-purpose earth station located at Agana, Guam.

12. IT IS FURTHER ORDERED that PCI shall provide all authorized users, including other communication common carriers, equitable and nondiscriminatory access to the earth station facilities authorized herein.

13. IT IS FURTHER ORDERED that, in light of our decision herein, MCI's petition IS DENIED.

14. This order is issued under Section 0.291 of the Commissions Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

[6] International Competitive Carrier Policies, 102 FCC 2d 812 (1985); *recon. denied*, 60 RR 2d 1435 (1986); *modified*, Regulation of International Common Carrier Services, 7 FCC Rcd 7331 (1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORP. File No. I-T-C-94-119

Application for authority to acquire and operate facilities for service between the U.S. and Oman.

ORDER AND AUTHORIZATION

Adopted: March 28, 1994; Released: April 20, 1994

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the U.S. and Oman by MCI Telecommunications Corporation (MCI).

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-119 IS GRANTED and MCI is authorized to:

a. lease from Comsat and operate 30 voice-grade satellite circuits between the Andover, Maine earth station and an appropriate INTELSAT satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Oman furnished by MCI's correspondent in Oman;

b. own and operate 30 voice-grade circuits in the Andover earth station to be used in conjunction with the satellite space segment capacity;

c. own and operate 30 voice-grade connecting circuits between the Andover earth station and MCI's West Orange, New Jersey operating center; and

d. use facilities in a, b and c above to provide MCI's regularly authorized services between the U.S. and Oman.

3. IT IS FURTHER ORDERED that our authorization of MCI to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and Oman -- that is, private lines which originate in the United States and terminate in Oman or which originate in Oman and terminate in the United States. In addition, MCI may not -- and MCI's tariff must state that MCI's customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or Oman end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that Oman affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559 (1991) *petitions for reconsideration pending.*

4. IT IS FURTHER ORDERED that neither MCI nor any persons or companies directly or indirectly controlling or controlled by MCI, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which MCI or any persons or companies controlling or controlled by MCI are parties.

5. IT IS FURTHER ORDERED that applicant shall file copies of any operating agreement it enters into with its foreign correspondent with the Commission within 30 days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to §203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.15(b) of the Commission's Rules, 47 C.F.R. §63.15(b).

9. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

10. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities
Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

LDDS Communications, Inc. File No. I-T-C-93-321

Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, to operate as an international private line resale carrier

ORDER AND CERTIFICATE

Adopted: April 4, 1994; Released: April 20, 1994

By the Chief, International Facilities Division:

1. On August 16, 1993, LDDS Communications, Inc, (LDDS)[1] filed the above-captioned application seeking authority pursuant to Section 214 of the Communications Act (Act), as amended, to resell the international private lines and switched services of other carriers between the United States and Canada for the purpose of providing a range of voice, data and video private line services to Canada.[2] In addition, LDDS seeks authority to resell other carriers' international private line services interconnected at both ends to the public switched networks (PSNs) for the provision of switched services, including operator-assisted services, between the United States and Canada.

2. We placed the application on public notice on September 15, 1993. American Telephone and Telegraph (AT&T) filed a petition to deny in response to which LDDS filed an opposition.[3]

3. The Commission has previously concluded that the public interest in cost-based telecommunications services would be served by the encouragement of international resale, provided that steps were taken to ensure that such resale did not result in the unilateral diversion of U.S. inbound switched traffic to private lines, and thus, exacerbate the settlements deficit. The Commission, therefore, conditioned its resale policy by requiring U.S. carriers to permit resale of their international private lines only to those countries which afford equivalent resale opportunities.[4] The Commission first addressed the issue of equivalency in the *fONOROLA Corporation and EMI Communications Corporation Order* (*fONOROLA/EMI Order*).[5] In that Order, the Commission found that Canada affords resale opportunities equivalent to those available under U.S. law. As a result, resale of international private lines for switched services and of interconnected international private lines for private services between the United States and Canada is permitted subject to grant of appropriate Section 214 authorization.

4. AT&T opposes grant of LDDS' application for international private line resale between the United States and Canada based on its arguments in its petition for reconsideration of our determination that Canada affords resale opportunities equivalent to those available under U.S. law.[6] AT&T generally argues there that the Commission focused solely on the issue of nondiscrimination and did not undertake a comparative analysis of the resale opportunities available within Canada and the United States, thus misapplying the equivalency test. In this proceeding, AT&T requests that any international private line resale authority granted herein to LDDS be conditioned upon the outcome of the Commission's decision in the *fONOROLA/EMI Order*. In addition, AT&T urges the Commission to impose upon LDDS periodic traffic reporting requirements (either monthly, quarterly, or semi-annually) to monitor the specific effects of private line resale on above-cost accounting rates and settlements outpayments.

5. As stated by AT&T, all of these issues are raised in AT&T's pending petition for reconsideration of the *fONOROLA/EMI Order*. We defer consideration of these issues to AT&T's pending petition, and thus, deny AT&T's request that we immediately impose periodic reporting requirements on LDDS. However, we grant AT&T's request to condition this authorization upon the outcome of the Commission's review of AT&T's pending petition for reconsideration. We find that the present and future public convenience and necessity require the grant of this au-

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[1] LDDS operates as a nondominant domestic common carrier and is authorized to operate as a nondominant international resale carrier. *See* Application at 2.

[2] LDDS intends to resell the private line and switched services of one or more of the following carriers pursuant to their applicable tariffs: AT&T Tariffs FCC Nos. 1 & 2, Cable & Wireless Tariff FCC No. 3, LDDS Tariff FCC No. 1, Litel Tariff FCC No. 1, MCI Tariff FCC No. 1, Sprint Tariff FCC Nos. 1 & 2, and Wiltel Tariff FCC No. 2.

[3] On October 29, 1993, LDDS filed a motion for leave to file late its opposition to AT&T's petition. We find that it is in the public interest to have as complete a record as possible, and that no parties will be unfairly prejudiced by acceptance of the late filing. We, therefore, grant LDDS' request, and accept its late-filed opposition.

[4] *See Regulation of International Accounting Rates*, CC Docket 90-337, Phase II First Report and Order (*International Resale Order*), 7 FCC Rcd 559 (1992). Subsequently the Commission stated that the resale of international private lines for the provision of international private line services, as opposed to switched services, does not implicate the settlements process to the extent such lines are used only to carry non-switched traffic that is not subject to the international settlements process, and thus clarified that the equivalency requirement does not apply to the resale of international private lines for the provision of private line services. Nonetheless, the Commission confirmed the right of an end user to interconnect its international private line to the PSN through, for example, its own PBX. *See Regulation of International Accounting Rates*, CC Docket 90-337, Phase II Order on Reconsideration and Third Further Notice of Proposed Rulemaking (*Phase II Third Further Notice*) 7 FCC Rcd 7927 (1992).

[5] *fONOROLA/EMI Order*, 7 FCC RCd 7312 (1992), *petition for reconsideration pending*.

[6] AT&T requests that its petition for reconsideration of the *fONOROLA/EMI Order* be incorporated by reference into its petition to deny LDDS' application. *See* Petition at p. 2

thorization to LDDS[7] subject to possible revocation or modification based on the outcome of AT&T pending petition for reconsideration.

6. Accordingly, IT IS ORDERED that application File No. I-T-C-93-321 IS GRANTED and LDDS is authorized to resell international switched services between the United States and Canada pursuant to the applicable tariffs of the authorized U.S. international common carriers specified, *supra,* in note 2.

7. IT IS FURTHER ORDERED that LDDS is authorized to lease and operate one-half interest in up to 200 DS-1 circuits (as detailed in Appendix A) for the provision of international private line and switched services, pursuant to the applicable tariffs of the authorized U.S. international common carriers specified, supra, in note 2.

8. IT IS FURTHER ORDERED that the authority granted herein to resell international private lines for the provision of switched services and interconnected private line services between the United States and Canada is limited to the provision of such services between the United States and Canada only – that is, private lines which carry traffic that originates in the United States and terminates in Canada, or traffic that originates in Canada and terminates in the United States.

9. IT IS FURTHER ORDERED that neither LDDS or any person or companies directly or indirectly controlling it or controlled by it, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possession which is denied to any other United States carrier by reason of any concession contract, understanding, or working arrangement to which LDDS or any such persons or companies controlling or controlled by LDDS are parties.

10. IT IS FURTHER ORDERED that LDDS shall file tariff provisions pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

11. IT IS FURTHER ORDERED that LDDS shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. Section 43.61.

12. IT IS FURTHER ORDERED that LDDS shall file semi-annual reports of circuit additions, pursuant to Section 63.15(b), 47 C.F.R. Section 63.15(b).

13. IT IS FURTHER ORDERED that LDDS shall file with the Commission a copy of any operating agreement it enters into with its foreign correspondents within thirty (30) days of execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. Section 43.51.

14. IT IS FURTHER ORDERED that LDDS shall file all arrangements for the interconnection of private lines to the U.S. public switched network, pursuant to Section 43.51(a) of the Commission's Rules, 47 C.F.R. Section 43.51(a).

15. IT IS FURTHER ORDERED that this Order may be subject to future modification or revocation pursuant to the outcome of the *fONOROLA/EMI Order (pet. for recon. pending)*, the *Phase II Third Further Notice*, and any other relevant proceedings.

16. IT IS FURTHER ORDERED that grant of this authorization to resell international private lines for the provision of both interconnected private line services and switched services between the United States and Canada is conditioned upon Canada's continuing to afford resale opportunities equivalent to those available under U.S. law.

17. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services LDDS seeks authorization to provide. The transmission of money is not considered to be a common carrier service.

18. This Order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the public notice of this Order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Appendix A

International Private Lines for Private Line Services

Canada	100 DS-1 Circuits

International Private Lines for Switched Services

Canada	100 DS-1 Circuits

[7] LDDS requested that this authorization be granted in the name of LDDS-Metro if issued after the merger of LDDS with M/R Corporation. LDDS has submitted in this proceeding no evidence of consummation of this proposed transaction. Therefore, we grant this authorization in the name of LDDS.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Financial Transmission Services, Inc. — File No. I-T-C-94-108

Application for Authority under Section 214 of the Communications Act, as amended

ORDER

Adopted: April 4, 1994; Released: April 20, 1994

By the Chief, International Facilities Division:

1. The above-captioned application filed by Financial Transmission Services, Inc. (FTS) requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell an international private line for the provision of switched services between the United States and the Dominican Republic.

2. The application was placed on public notice on January 26, 1994. On February 25, 1994, American Telephone & Telegraph Company (AT&T) filed a petition to deny FTS's request to resell an international private line for the provision of switched services between the United States and the Dominican Republic. Specifically, AT&T asserts that FTS has failed to demonstrate that the Dominican Republic offers U.S. carriers equivalent resale opportunities as required by the *International Resale Order*.[1] FTS did not reply to AT&T's petition.

3. In the *International Resale Order*, the Commission concluded that the public interest in cost-based international telecommunications services would be served by the encouragement of international resale, provided that steps were taken to ensure that such resale did not result in the unilateral diversion of U.S. inbound switched traffic to private lines, and thus, exacerbate the settlements deficit. The Commission, therefore, conditioned its international resale policy by requiring U.S. carriers to permit resale of their international private lines only to those countries designated as "equivalent".[2]

4. Pursuant to the *International Resale Order*, an applicant seeking authorization under Section 214 of the Communications Act to resell an international private line for the purpose of providing a basic telecommunications service to a particular foreign country is required to demonstrate that that country affords equivalent resale opportunities to those available under U.S. law.[3] An applicant may satisfy this requirement in its Section 214 application in two ways. The applicant may submit a statement that the Commission has publicly determined the particular foreign country to be equivalent. Such a determination may, for example, be evidenced by a public notice or a prior Section 214 certificate granted to another carrier. Or an applicant may submit other evidence demonstrating that equivalent resale opportunities exist between the United States and that country. In its Section 214 application, FTS incorrectly asserts that the Commission has previously determined that the Dominican Republic affords resale opportunities equivalent to those available under U.S. law. Nor has FTS submitted any other evidence to demonstrate that the Dominican Republic affords equivalent resale opportunities. Therefore, pursuant to our international private line resale policy, we deny FTS' request for authority to resell international private lines for the provision of switched services between the United States and the Dominican Republic.

5. Accordingly, IT IS ORDERED that application File I-T-C-94-108 IS DENIED.

6. This Order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the public notice of this Order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

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[1] *See Regulation of International Accounting Rates*, CC Docket 90-337, *Phase II, First Report and Order*, 7 FCC Rcd 559 (1992).

[2] Subsequently, the Commission stated that the resale of international private lines for the provision of international private line services, as opposed to switched services, does not implicate the settlements process to the extent such lines are used only to carry non-switched traffic that is not subject to the international settlements process, and thus clarified that the equivalency requirement does not apply to the resale of international private lines for private line services. Nonetheless, the Commission confirmed the right of an end user to interconnect its international private line to the PSN through, for example, its own PBX. (*See Regulation of International Accounting Rates*, CC Docket 90-337, *Phase II, Order on Reconsideration and Third Further Notice of Proposed Rulemaking (Phase II Third Further Notice)*, 7 FCC Rcd 7927 (1992)).

[3] *See International Resale order*, 7 FCC Rcd 559, 561 (1992). This requirement is set forth in Section 63.01(k)(5) of the Commission's Rules, 47 CFR §63.01(k)(5).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-10

In the Matter of

Nevada Bell's Petition
for Waiver of the
Commission's September 4, 1991
Order in Docket 86-10

ORDER

Adopted: April 8, 1994; Released: April 21, 1994

By the Deputy Chief, Policy, Common Carrier Bureau:

I. INTRODUCTION

1. On September 20, 1993, Nevada Bell filed a Petition for Waiver of the 1995 access time standard for 800 Data Base Service established in the *Memorandum Opinion and Order on Reconsideration* in this docket (Reconsideration Order).[1] Specifically, Nevada Bell seeks a waiver of this standard for one switch, located in Mina, Nevada. We now grant, in part, Nevada Bell's requested waiver of the 1995 access time standards for its Mina switch and order that it achieve an access time of five seconds or less for that switch by March 1, 1998.

II. BACKGROUND

2. The Reconsideration Order relaxed the more ambitious access time standards for implementation of the 800 data base system originally set in the 1989 *Report and Order*.[2] Under the revised standards, the Bell Operating Companies (BOCs) and GTE were required to reduce access times for 97% of their originating 800 data base access traffic to five seconds or less by March 1993. In addition, each company had to meet two additional requirements within two years thereafter.[3] First, none of the company's data base 800 traffic could experience an access time of greater than five seconds.[4] Second, the mean access time for all of the company's 800 data base traffic was required to be 2.5 seconds or less.[5]

3. On January 21, 1992, Pacific Telesis (Pactel), acting on behalf of Pacific Bell and Nevada Bell, requested a waiver of the 1993 and 1995 access time standards. On July 28, 1992, the Common Carrier Bureau granted a waiver of the 1993 access time standards,[6] but denied, without prejudice, the requested waiver of the 1995 standards, ruling that it was premature to consider such a request.[7] The Bureau, however, acknowledged the possibility that Pactel "might be able to demonstrate in the future that good cause exists for a waiver of the 1995 requirements."[8]

III. NEVADA BELL'S WAIVER PETITION

4. Nevada Bell claims that it would have to spend $1.2 million replacing its Mina switch to meet our five-second access time standard.[9] It claims that the current access time for that switch is 6.2 seconds,[10] just 1.2 seconds longer than the 1995 requirement of 5 seconds. Nevada Bell states, further, that the Mina switch serves only 196 lines in an area, with little or no expected growth, and originates only .03 of one percent of Nevada Bell's interstate 800 traffic.[11] Thus, Nevada Bell argues, the cost of meeting the 1995 access time standards for the Mina switch is disproportionate to the benefits.[12]

5. Nevada Bell states that it expects the Mina switch to be obsolete in five to seven years and anticipates needing to replace the switch at that time.[13] It asks that it be given until March 1, 2000 to meet the five-second access time standard for the Mina end office.[14]

IV. POSITIONS OF OTHER PARTIES

6. Southwestern Bell Telephone Company (SWBT) supports Nevada Bell's petition for waiver. SWBT asserts that it would be unreasonable to require Nevada Bell to spend $1.2 million to replace a switch for a central office with only 196 lines and little, if any, possibility of growth.[15] SWBT also states that "one and two tenths seconds is not worth one and two tenths million dollars," particularly when the switch serves such a small number of lines and when there is the likelihood of replacement of the switch in 5-7 years.[16] SWBT points out that Nevada Bell's compliance with the requirements in every other central office indicates that Nevada Bell is not lax or deficient in its SS7 deployment efforts.[17] American Telephone and Telegraph Company (AT&T), in a letter to the Commission, also

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[1] *See Provision of Access for 800 Service*, CC Docket No. 86-10, *Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 5421 (1991) (Reconsideration Order).
[2] *Provision of Access for 800 Service*, CC Docket No. 86-10, *Report and Order*, 4 FCC Rcd 2824 (1989).
[3] The Commission subsequently delayed the date to May 1, 1993. *Provision of Access for 800 Service*, 7 FCC Rcd 8616 (1992). The Commission did not, however, change the date for compliance with the 1995 access time standards.
[4] Reconsideration Order at para. 19.
[5] *Id.*
[6] *Provision of Access for 800 Service, Order*, 7 FCC Rcd 5042 (1992) (Waiver Order).
[7] *Id.* at para. 19.
[8] *Id.*
[9] *Nevada Bell Petition* at 2-3.
[10] *Id.*
[11] *Id.*
[12] *Id.* at 3.
[13] *Id.* at 2.
[14] *Id.* at 4.
[15] *SWBT Comments* at 2.
[16] *Id.*
[17] *Id.*

indicates its support for Nevada Bell's petition for waiver due to the "unique and significantly limited circumstances" of Nevada Bell's switch in Mina.[18]

7. MCI Telecommunications, Inc. (MCI) opposes Nevada Bell's petition for waiver on the grounds that a waiver is not in the public interest because it would "continue the degradation of service to Mina, Nevada."[19] Additionally, MCI asserts that Nevada Bell has demonstrated nothing unusual about this particular case to justify a waiver.[20]

V. DISCUSSION

8. The Commission may waive any provision of its rules or orders on petition if good cause is shown.[21] A showing of good cause requires the petitioner to demonstrate special circumstances that warrant deviation from the rule and to show how such deviation would serve the public interest.[22] Based on the special circumstances presented by Nevada Bell, we conclude that Nevada Bell has met the burden of justifying a limited waiver. In particular, it appears that the Mina switch is incapable of performing SS7 signaling itself. Thus, Nevada Bell will have to replace the switch entirely to meet our access time standards. Given that the Mina switch serves less than 200 access lines, originates only .03 of one percent of Nevada Bell's interstate 800 calls, and achieves an access time of only 1.2 seconds longer than our requirements, we agree that the cost of meeting the 1995 standards in a timely manner is excessive in relation to the benefits. Based on the facts above, we find that Nevada Bell has shown good cause for its requested waiver.

9. Nevada Bell indicates that the Mina switch will be obsolete within five to seven years and will need to be replaced at that time. In its request for a waiver until March 1, 2000, Nevada Bell is evidently relying on a seven-year life estimate for the switch, the maximum stated possibility. In the interest of limiting the waiver to the shortest reasonable period, we find that reliance on Nevada Bell's five-year estimate would be reasonable. It balances our desire not to impose an unreasonable deployment burden on Nevada Bell and simultaneously to minimize the delay in achieving reduced 800 access times for consumers served by the Mina central office. Thus, Nevada Bell must comply with the 1995 Access Time Standards by March 1, 1998. We emphasize that in granting this limited waiver, we rely on the unique facts of this case, which include significant costs of compliance, limited deviation from the Commission's standard, and a very small universe of affected customers. In the event that we receive additional waiver requests, they will be granted only if they present an equally compelling set of circumstances.

VI. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that Nevada Bell's Petition for Waiver of the Commission's September 4, 1991 Order in Docket 86-10 IS HEREBY GRANTED IN PART. Nevada Bell's Mina switch must comply with the 1995 Access Time Standards by March 1, 1998.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief, Policy
Common Carrier Bureau

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[18] *See* letter from Karen E. Weis, Division Manager, Government Affairs, American Telephone and Telegraph Company, to William F. Caton, Acting Secretary, Federal Communications Commission, November 3, 1993.

[19] *MCI Comments* at 4.

[20] *Id.*

[21] 47 C.F.R. § 1.3.

[22] Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AFFORD-A-CALL CORPORATION,
Complainant,

v.

THE OHIO BELL TELEPHONE COMPANY,
Defendant,

File No. E-92-131

and

CHARTER NETWORK COMPANY,
Complainant,

v.

AMERITECH OPERATING COMPANIES,
Defendant,

File No. E-92-132

and

LITEL TELECOMMUNICATIONS CORPORATION d/b/a LCI INTERNATIONAL TELECOM CORPORATION,
Complainant,

v.

AMERITECH OPERATING COMPANIES,
Defendant.

File No. E-92-133

ORDER

Adopted: April 14, 1994; Released: April 21, 1994

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On September 30, 1992, LiTel Telecommunications Corporation d/b/a LCI International Telecom Corporation[1] filed the above-captioned complaints against the defendants seeking damages resulting from the defendants' alleged violations of the Commission's rate of return prescription for the period January 1, 1989 through December 31, 1990. On April 4, 1994, LCI and the defendants filed a joint motion to dismiss the complaints with prejudice stating that a mutually agreeable settlement of all pending controversies has been reached.

2. We are satisfied that granting the parties' motion to dismiss the complaints will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of the Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated in Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the parties' Joint Motion to Dismiss IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaints ARE DISMISSED WITH PREJUDICE and the proceedings ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

[1] LCI International Telecom Corporation (LCI) formerly did business as LiTel Telecommunications Corporation, and is the successor in interest to Charter Network Company and Afford-A-Call Corporation. These parties will be referred to as LCI.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Certified Computers — NAL/Acct. No. 315LA0120
Garden Grove, California

ORDER

Adopted: April 11, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Certified Computers filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $7,000 issued for violation of Section 302(b) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 302(b), and Section 2.803 of the Commission's Rules, 47 C.F.R. § 2.803. For the reasons noted below, the Bureau reduces the monetary forfeiture amount to $2,000.

II. BACKGROUND

2. On August 24, 1993, the Commission's Los Angeles Office issued a Notice of Apparent Liability (NAL) to Certified Computers. The penalty was imposed for offering for sale an uncertified personal computer (386DX-40MHz). There was no evidence that the device had been authorized by the Commission, as is required by Section 15.101 of the Rules, 47 C.F.R. § 15.101, and no disclaimer accompanied the display. *See* 47 C.F.R. § 2.803. Based on the response from Certified Computers, the Los Angeles Office issued a Notice of Forfeiture (NOF) for $7,000 on October 1, 1993. Certified Computers now appeals. Petitioner contends that his actions were not willful; that he is unable to pay the amount of the forfeiture, and that he has since gone out of business.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in Petitioner's letter, which is here treated as a Petition for Reconsideration, have been thoroughly considered and are incorporated herein by reference. Review of these arguments raised in the petition as well as review of the NAL and NOF, reveals that Petitioner has no record of any previous violations of Commission Rules. Further, a review of the financial documentation provided indicates that mitigation on the basis of ability to pay is justified. Thus, the forfeiture amount will be reduced accordingly.

IV. ORDERING CLAUSES

4. IT IS ORDERED pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, that the petition for reconsideration is GRANTED in part and DENIED in all other respects.

5. IT IS FURTHER ORDERED that Certified Computers must pay the forfeiture amount of two thousand dollars ($2,000) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315LA0120 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Certified Computers and counsel.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Hampton Roads
Yacht Corporation NAL/Acct. No. 315NF00119
Norfolk, Virginia

ORDER

Adopted: April 11, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Hampton Roads Yacht Corporation filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $8,000 issued for violation of Section 301 of the Communications Act of 1934, as amended, (the Act), 47 U.S.C. §301, and Section 503(b) of the Commission's Rules 47 U.S.C. §503(b). For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On May 20, 1993, the Norfolk Field Office issued a Notice of Apparent Liability (NAL) to Hampton Roads Yacht Corporation. The penalty was imposed for unauthorized transmissions. Based on the response from Hampton Roads Yacht Corporation, the Norfolk Office issued a Notice of Forfeiture (NOF) for $8,000 on September 15, 1993. Hampton Roads Yacht Corporation now appeals. The petitioner contends that, as contractors, they were licensed through the City of Norfolk.

III. DISCUSSION AND CONCLUSION

3. The arguments raised at page 1 of the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that Hampton Roads Yacht Corporation must pay the forfeiture amount of eight thousand dollars ($8,000) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315NF00119 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Hampton Roads Yacht Corporation and counsel.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Jovian Logic Corporation
Fremont, California

NAL/Acct. No. 215CG0015

ORDER

Adopted: April 11, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Jovian Logic Corporation filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $5,600 issued for violation of Section 302(b) of the Communications Act of 1934, as amended, (the Act) 47 U.S.C. § 302(b), and Section 2.803, of the Commission's Rules. 47 C.F.R. § 2.803. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On May 20, 1992, the Commission's Chicago Office issued a Notice of Apparent Liability (NAL) to Jovian Logic Corporation. The penalty was imposed for exhibiting an unauthorized radio frequency device, a Genie Scan Converter, at the Spring '92 COMDEX trade show in Chicago, Illinois. Based on the response from Jovian Logic Corporation, the Chicago Office issued a Notice of Forfeiture (NOF) for $7,000 on June 26, 1992. Jovian Logic Corporation now appeals. The petitioner contends it did not know that its device required approval as a Class B device, because it is intended for use by businesses not home users. It also argues that liability should not be attached because the device was not actually sold, but merely exhibited to business people attending the trade show.

III. DISCUSSION AND CONCLUSION

3. The, arguments raised at 2,3, and 4 of Petitioner's response have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that Jovian Logic Corporation must pay the forfeiture amount of five thousand six-hundred dollars ($5,600) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 215CG0015 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Jovian Logic Corporation.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

David Ingram NAL/Acct. No. 315PS0015
Mableton, Georgia

ORDER

Adopted: April 11, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. David Ingram filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $2,500 issued for violation of Section 301 of the Communications Act, as amended (the Act), 47 U.S.C. § 301, and Sections 95.409, 95.413(a)(4) and (a)(6), 95.413(b), and 95.416 of the Commission's Rules, 47 C.F.R. §§ 95.409, 95.413(a)(4), (a)(6), 95.413(b), 95.416. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On April 19, 1993, the Commission's Powder Springs Office issued a Notice of Apparent Liability (NAL) to David Ingram. The penalty was imposed for operating non-type accepted equipment capable of operation on frequencies outside the CB band. Petitioner was also cited for repeatedly violating CB operating rules by re-transmitting the signal from a broadcast station, continuously, in excess of five minute time periods, and transmitting music. Based on the response from Petitioner, the Powder Springs Office issued a Notice of Forfeiture (NOF) for $2,500 on June 10, 1993. Petitioner now appeals. The Petitioner contends that he is financially unable to pay the forfeiture, and has discarded the illegal equipment.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in Petitioner's letter, which is hereby accepted as a Petition for Reconsideration, have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed. However, we note that the petitioner claims that he cannot pay the forfeiture and has submitted financial information in support of this contention. The financial information is insufficient to support this contention. Accordingly, we affirm the forfeiture amount.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. §503(b), and Section 1.106 of the Rules, 47 C.F.R. §1.106, the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that David Ingram must pay the forfeiture amount of two thousand five-hundred dollars ($2,500) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315PS0015 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to David Ingram.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

International Matex Tank Terminals Bayonne, New Jersey — NAL/Acct. No. 315NY0001

ORDER

Adopted: April 11, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. International Matex Tank Terminals filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $4,000 issued pursuant to Section 503(b), 47 U.S.C. § 503(b), for violation of Section 301 of the Communications Act of 1934, as amended, (the Act), 47 U.S.C. § 301. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On October 19, 1992, the New York Field Office issued a Notice of Apparent Liability (NAL) to International Matex Tank Terminals. The penalty was imposed for operating an unlicensed radio station on marine channel 16. Based on the response from International Matex Tank Terminals, the New York Field Office issued a Notice of Forfeiture (NOF) for $4,000 on November 25, 1992. International Matex Tank Terminals now appeals. The petitioner contends that the radio was purchased by previous management and that they had always believed that it was purchased and installed pursuant to all FCC regulations and requirements. The petitioner also contends that it has made efforts to get a license since imposition of the forfeiture.

III. DISCUSSION AND CONCLUSION

3. The arguments raised at paragraphs 3 and 4 of the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that International Matex Tank Terminals must pay the forfeiture amount of Four Thousand dollars ($4,000) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315NY0001 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to International Matex Tank Terminals and counsel.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

K40 Electronics Limited
Warren, Michigan

NAL/Acct. No. 215DT0018

ORDER

Adopted: April 11, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. K40 Electronics Limited filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $20,000 issued for violation of Section 302(b) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 302(b), and Sections 2.803 and 2.815 of the Commission's Rules, 47 C.F.R. §§ 2.803, 2.815. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On July 15, 1993, the Commission's Detroit Office issued a Notice of Apparent Liability (NAL) to K40 Electronics Limited. The penalty was imposed for its sale of a non-type accepted CB transceiver (a modified Ranger RCI 2950), and an external radio frequency power amplifier (i.e. linear amplifier) (Palomar 200A), and its offer to sell a non-type accepted CB transceiver. Based on the response from K40 Electronics, the Detroit Office issued a Notice of Forfeiture (NOF) for $20,000 on September 14, 1993. K40 Electronics now appeals. The petitioner contends that the amount of the forfeiture is excessive because it was not "willful" and because of the circumstances surrounding the violation. Petitioner also argues that the Commission erred in failing to apply the downward adjustment criteria set out in the Commission's *Policy Statement* guidelines on forfeitures. Finally, Petitioner also argues that he was not served with a citation and given an opportunity to meet with a Commission official prior to issuance of the NAL, in violation of Section 503(b)(5), 47 U.S.C. § 503(b)(5).

III. DISCUSSION AND CONCLUSION

3. The arguments raised at paragraphs 3,5, 6 and 7 of the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition, as well as review of the NAL and NOF, we find that the petitioner fails to present any arguments which warrant a reduction or cancellation of the forfeiture.[1] Petitioner failed to present any evidence supporting mitigation based on any of the factors set out in Section 503(b)(2)(D) of the Act.[2] Although Petitioner has no record of prior violations, no downward adjustment was made because Petitioner was charged with two violations, rather than the possible three. The base amount of forfeiture for each violation is $7,000. An upward adjustment was made because of the intentional nature of the violation. Evidence of record indicated that Petitioner was aware of the illegal nature of his activities and took precautions to avoid detection.[3]

4. Although the petitioner claims inability to pay the forfeiture, no documentation, such as tax returns or financial statements that were requested in the Notice of Apparent Liability, were submitted to support this claim. Accordingly, the forfeiture amount is affirmed.

IV. ORDERING CLAUSES

5. IT IS ORDERED, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, that the petition for reconsideration is DENIED.

6. IT IS FURTHER ORDERED that K40 Electronics Limited must pay the forfeiture amount of twenty thousand dollars ($20,000) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[4] Please place NAL/Acct. No. 215DT0018 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

7. IT IS FURTHER ORDERED that a copy of this Order shall be sent to K40 Electronics Limited and counsel.

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[1] Petitioner's actions are considered "willful" because the action of selling the illegal equipment was voluntary, not accidental. Petitioner need not have intended to violate the Rules or the Act for his actions to be deemed willful. *See* H.R. Rep. 97-765, 97th Cong. 2nd Sess. 50-51 (1982).

[2] Petitioner claims that he should have been issued a citation, been given an opportunity to meet with a Commission official, and shown to have subsequently engaged in the same conduct before a forfeiture could be imposed. The provisions of Section 503(b)(5) do not apply to violators who are engaged in an activity for which a license or other form of Commission authorization is required. The marketing of radio electronic equipment is an activity for which a form of Commission authorization is required. We therefore reject Petitioner's claim that he was entitled to any additional notice.

[3] The record indicates that Petitioner's employees were told not to make any sales themselves, but to refer all prospective would be purchasers to him. Petitioner also disclosed to the investigator making the purchase that he did not stock such equipment in the store because they were illegal and subject to being seized by the FCC.

[4] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ACN Network NAL/Acct. No. 315ST0012
Lynwood, Washington

ORDER

Adopted: April 7, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. ACN Network (Petitioner) filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $20,000 issued for violation of Section 302(b) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 302(b)and Sections 2.803 and 15.101(a) of the Commission's Rules, 47 C.F.R. § 2.803, 15.101(a). For the reasons noted below, we are cancelling the monetary forfeiture.

II. BACKGROUND

2. On February 17, 1993, the Commission's Seattle Office issued a Notice of Apparent Liability (NAL) to ACN Networks. The penalty was imposed for ACN's marketing (offering for sale) of personal computers models number: 386SX25/33; 486DX66; and 486DX33/66, without appropriate labelling or authorization. Based on the response from ACN Network, the Seattle Office issued a Notice of Forfeiture (NOF) for $20,000 on March 18, 1993. ACN Network now appeals. Petitioner contends that the equipment it offered for sale was certified, and has offered copies of FCC authorization grants which it claims covers the equipment.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in Petitioner's letter, which is here considered as a Petition for Reconsideration, have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments as well as review of the NAL and NOF, we find that the imposed forfeiture is not in accord with the Act and rules, and is hereby cancelled.

IV. ORDERING CLAUSES

4. IT IS ORDERED, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, that the petition for reconsideration is GRANTED and the monetary forfeiture is CANCELLED.

5. IT IS FURTHER ORDERED that a copy of this Order shall be sent by certified mail, return receipt requested to ACN Network.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Shamrock Technology Co., Ltd.
Hsin-Tein City, Taipei Hsien,
Taiwan, R.O.C.

NAL/Acct. No. 315LA0079

ORDER

Adopted: April 11, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Shamrock Technology Co., Ltd. filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $7,000 issued pursuant to Section 503, 47 U.S.C. §503, for violation of Section 302(b) of the Communications Act of 1934, as amended, 47 U.S.C. §302(b), and Section 2.803 of the Commission's Rules, 47 C.F.R. §2.803. For the reasons noted below, the Bureau reduces the monetary forfeiture.

II. BACKGROUND

2. On December 21, 1992, the Los Angeles Field Office issued a Notice of Apparent Liability (NAL) to Shamrock Technology Co., Ltd. The penalty was imposed for exhibiting an uncertified personal computer device. Based on the response from Shamrock, the Los Angeles Field Office issued a Notice of Forfeiture (NOF) for $7,000 on January 28, 1993. Shamrock now appeals. The petitioner contends that the device, the maximum resolution 1280 x 1024 monitor, was for informational purposes only.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed. However, we note that the petitioner has no record of prior violations. Therefore we will reduce the forfeiture amount accordingly.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. §503(b), and Section 1.106 of the Rules, 47 C.F.R. §1.106, the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that Shamrock Technology Co., Ltd. must pay the forfeiture amount of Five Thousand Six Hundred Dollars ($5,600) within thirty (30) days of receipt of this Order. Payment may be made by check or money order drawn on a USA bank account and made payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315LA0079 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Shamrock Technology Co., Ltd.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PC Warehouse NAL/ACCT. NO. 215SF0030
Palo Alto, CA

ORDER

Adopted:April 11, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. PC Warehouse filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $7,000 issued pursuant to Section 503, 47 U.S.C. §503, for violation of Section 302(b) of the Communications Act of 1934, as amended, 47 U.S.C. §302(b), and Section 2.803 of the Commission's Rules 47 C.F.R. § 2.803. For the reasons noted below, the Bureau reduces the monetary forfeiture amount to $5,600.

II. BACKGROUND

2. On August 18, 1992, the San Francisco, CA Field Office issued a Notice of Apparent Liability (NAL) to PC Warehouse. The penalty was imposed for offering for sale Class B personal computers for which no equipment authorization had been granted. Based on the response from PC Warehouse, the San Francisco Office issued a Notice of Forfeiture (NOF) for $7,000 on December 2, 1992. PC Warehouse now appeals. The petitioner contends that the two inspected computers were not demonstration units and they were not for the purposes of marketing and sales. They were solely for the purposes of internal testing and peripheral evaluation uses.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Review of these arguments raised in the petition as well as review of the NAL and NOF, reveals that the arguments made by the petitioner are insufficient to warrant mitigation or cancellation of the forfeiture. However, we note that the prior history of compliance was not considered and reduce accordingly.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. §503(b), and Section 1.106 of the Rules, 47 C.F.R. §1.106, the petition for reconsideration is GRANTED in part and DENIED in all other respects.

5. IT IS FURTHER ORDERED that PC Warehouse must pay the forfeiture amount of Five Thousand Six Hundred Dollars ($5,600) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 215SF0030 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to PC Warehouse and counsel.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

City of Watsonville NAL/Acct. No. 215SF0074
Watsonville, CA 95077-5000

ORDER

Adopted: April 11, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. The City of Watsonville, CA (Watsonville) filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $1000 issued pursuant to Section 503, 47 U.S.C. §503, for violation of Section 301 of the Communications Act of 1934, as amended (the Act). For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On August 28, 1992, the FCC San Francisco Field Office issued a Notice of Apparent Liability (NAL) to Watsonville, CA. The penalty was imposed for $2000 for operation of an unlicensed radio transmitter in violation of Section 301 of the Act. Based on the response from petitioner, the San Francisco Field Office issued a Notice of Forfeiture (NOF) for $1000. The petitioner contends that "...Watsonville did not willfully disobey FCC regulations." The petitioner also contends that a departed employee failed to complete the license application so there exists willful effort to attain the license. Lastly, the petitioner contends that the forfeiture amount is "not easily financed at this time."

III. DISCUSSION AND CONCLUSION

3. The arguments raised by Watsonville in its Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed. It is incumbent on the licensee to properly prosecute applications for initial licenses and license renewals. Although the petitioner claims financial hardship to pay the forfeiture, no documentation, such as tax returns or financial statements were submitted to support this claim. Accordingly, the forfeiture amount is affirmed.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. §503(b), and Section 1.106 of the Rules, 47 C.F.R. §1.106, the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that the City of Watsonville, CA must pay the forfeiture amount of $1000 within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 215SF0074 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to the City of Watsonville.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

LXE, Inc. NAL/Acct. No. 315LA0143
Norcross, Georgia

ORDER

Adopted: April 11, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. LXE, Inc. filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $700 issued pursuant to Section 503, 47 U.S.C. §503, for violation of Section 302(b) of the Communications Act of 1934, as amended, (the Act) 47 U.S.C. §302(b), and Section 2.925 of the Commission's Rules, 47 C.F.R. §2.925. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On September 17, 1993, the Los Angeles Office issued a Notice of Apparent Liability (NAL) to LXE, Inc. The penalty was imposed for the marketing of an RF terminal without the required label affixed to the device. Based on the response from LXE, Inc., the Los Angeles Office issued a Notice of Forfeiture (NOF) for $700 on October 15, 1993. LXE, Inc. now appeals. The petitioner contends that the handheld RF terminal which was displayed at the Trade Show had a hand strap on the back which covered the required label and that the label would be readily visible once the strap was moved.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed. The NOF noted that the inspector handled the device at the trade show and examined the sides of the device.

4. We note that the petitioner paid the $700 monetary forfeiture when it filed its petition for reconsideration. Based on our instant decision, we accept the payment as satisfying the forfeiture.

IV. ORDERING CLAUSES

5. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is DENIED.

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to LXE, Inc.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BIS Technology, Inc.
Baldwin Park, California

NAL/Acct. No. 315LA0038

ORDER

Adopted: April 12, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. BIS Technology, Inc., filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $700 issued for violation of Section 302(b) of the Communications Act of 1934, as amended, (the Act), and Section 2.925 of the Commission's Rules. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On December 7, 1992, the Los Angeles Office issued a Notice of Apparent Liability (NAL) to BIS Technology, Inc. The penalty was imposed for marketing improperly labelled computer peripherals. Based on the response from BIS Technology, Inc., the Los Angeles Office issued a Notice of Forfeiture (NOF) for $700 on January 21, 1993. BIS Technology, Inc., now appeals.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed.

Although the petitioner mentions inability to pay the forfeiture, no documentation, such as tax returns or financial statements that were requested in the Notice of Apparent Liability, were submitted to support this claim. Accordingly, the forfeiture amount is affirmed.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that BIS Technology, Inc., must pay the forfeiture amount of SEVEN HUNDRED DOLLARS ($700) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315LA0038 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to BIS Technology, Inc.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Performance Diesel Service, Inc.
Stuart, Florida

NAL/Acct. No. 315VB0011

ORDER

Adopted: April 12, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Mr. Dillard R. Givens, President, Performance Diesel Service, Inc. (Petitioner) filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $8,000 issued for violation of Section 301 of the Communications Act of 1934, as amended, (the Act) 47 U.S.C. § 301. For the reasons noted below, the Bureau reduces the monetary forfeiture amount to $400.

II. BACKGROUND

2. On November 5, 1992, the Commission's Vero Beach Office issued a Notice of Apparent Liability (NAL) to Petitioner. The penalty was imposed for operating an unlicensed private coast station. Based on the response from Petitioner, the Vero Beach Office issued a Notice of Forfeiture (NOF) for $8,000 on December 3, 1992. Petitioner now appeals. Petitioner contends that the violation was inadvertent due to his lack of familiarity with Commission licensing requirements. Petitioner also contends that he is unable to pay the forfeiture.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments as well as review of the NAL and NOF, we find that the petition fails to present any new arguments or evidence that was not previously addressed. However, upon review, we find that the violation is comparatively minor in nature and therefore warrants a forfeiture amount less than that envisioned by the *Policy Statement. Policy Statement*, 6 FCC Rcd 6215 (1993). The forfeiture amount will be adjusted accordingly.

4. Petitioner submitted financial information to document his claim of inability to pay a forfeiture. We find that the financial information as submitted does not support this contention. We are not reducing the forfeiture amount because of inability to pay.

IV. ORDERING CLAUSES

5. IT IS ORDERED, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, that the petition for reconsideration is GRANTED in part and DENIED in all other respects.

6. IT IS FURTHER ORDERED that Performance Diesel Service, Inc. must pay the forfeiture amount of four hundred dollars ($400) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315VB0011 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

7. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Petitioner.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CompuMedia Technology, Inc.
Fremont, California

NAL/Acct. No. 315LA0017

ORDER

Adopted: April 12, 1994; Released: April 21, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. CompuMedia Technology, Inc., (CompuMedia) filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $7,000 issued for violation of Section 302(b) of the Communications Act of 1934, as amended, (the Act), and Section 2.803 of the Commission's Rules. For the reasons noted below, the Bureau reduces the monetary forfeiture amount to $5,600.

II. BACKGROUND

2. On December 7, 1992 , the Los Angeles Office issued a Notice of Apparent Liability (NAL) to CompuMedia. The penalty was imposed for marketing uncertified personal computer peripherals. Based on the response from CompuMedia, the Los Angeles Office issued a Notice of Forfeiture (NOF) for $7,000 on January 11, 1993. CompuMedia now appeals. The petitioner contends that this was a first offense.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Review of these arguments raised in the petition as well as review of the NAL and NOF, reveals no history of noncompliance. Thus, the forfeiture amount will be reduced accordingly.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. §503(b), and Section 1.106 of the Rules, 47 C.F.R. §1.106, the petition for reconsideration is GRANTED in part and DENIED in all other respects.

5. IT IS FURTHER ORDERED that CompuMedia Technology, Inc., must pay the forfeiture amount of FIVE THOUSAND AND SIX HUNDRED DOLLARS ($5,600) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315LA0017 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U.S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to CompuMedia Technology, Inc.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IDB WORLDCOM SERVICES, INC. File No. I-T-C-94-211

Application for authority to lease and operate facilities for the provision of direct telex service between the United States and Cuba

ORDER AND AUTHORIZATION

Adopted: April 14, 1994; Released: April 22, 1994

By the Chief, International Facilities Division:

1. The Commission has under consideration the above-captioned application filed by IDB WorldCom Services, Inc. (IDB) requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to establish channels of communication between the United States and Cuba for the provision of direct telex service. The application was placed on the Commission's public notice and no comments were received.

2. IDB proposes to provide international telex service between the U.S. and Cuba via the INTELSAT satellite located at 325.5^0 E.L. using appropriately licensed existing earth station facilities owned or leased by it or its affiliates. Specifically, IDB requests authority to lease from Comsat and operate one 9.6 kbps analog SCPC circuit to be used together with matching facilities provided by INTERTEL S.A. (INTERTEL) of Cuba to derive up to 46 telex circuits with the use of TDM equipment. IDB states that it has already entered into an operating agreement with INTERTEL for the establishment of direct telex service between the U.S. and Cuba. Under the terms of its agreement with INTERTEL, there will be a 50/50 split of the prevailing $3.00 per minute accounting rate for telex services.[1] IDB states that it will initiate service within one year.

3. IDB states that the public interest would be served by a grant of its application since it will result in the rapid introduction of new lines of telecommunications between the United States and Cuba. IDB notes that it is virtually impossible to make a telephone call from the U.S. to Cuba. Because of the continuing dispute over the appropriate switched voice accounting rate and the disposition of blocked funds, U.S. carriers have been unable to expand direct telephone service between the U.S. and Cuba. IDB proposes to offer direct telex service as a means to satisfy a small portion of the enormous demand for telecommunications between the U.S. and Cuba.

4. In a letter dated July 22, 1993, the U.S. Department of State informed the Commission of the Executive Branch's general policy guidelines for implementation of the telecommunications provisions of the Cuban Democracy Act, which provides that "telecommunication services between the United States and Cuba shall be permitted."[2] Among the policy guidelines are the following requirements: 1) the proposals must have the potential to be operational within a year; 2) settlements must not be more favorable to Cuba than the current 50/50 split of the $1.20 per minute accounting rate; 3) proposals must be limited to equipment and services necessary to deliver a signal to Cuba; 4) proposals must utilize modes of communications already in place between the U.S. and Cuba; and 5) carriers shall report the number of circuits activated by facility on June 30 and December 31 of each year and on the one-year anniversary of the notification by the FCC in the Federal Register.

5. Upon consideration of IDB's application, we find that a grant of its application will serve the public interest subject to the conditions set forth below. IDB's application is consistent with the Executive Branch's general guidelines set forth in the Department of State's letter. IDB states that it will initiate service within one year, and expects to initiate service shortly after all requisite regulatory approvals have been obtained. IDB's proposed use of INTELSAT facilities and appropriately licensed existing earth station facilities satisfies the requirements that facilities already be in existence and be limited to equipment and services necessary to deliver a signal to Cuba. With respect to IDB's proposed 50/50 split of a $3.00 per minute accounting rate, the Department of State in a follow-up letter dated March 14, 1994 found a $3.00 per minute accounting rate for telex service to be consistent with the guidelines contained in its July 22, 1993 letter. Furthermore, the Department of State states that it has no objection to our approval of the application.[3]

6. Accordingly, IT IS ORDERED that application File No. I-T-C-94-211 IS GRANTED and IDB WorldCom Services, Inc. is authorized to:

a. lease from Comsat and operate one 9.6 kbps analog SCPC circuit between an appropriately licensed existing U.S. earth station and the INTELSAT satellite located 325.5$ E.L. connecting with matching facilities furnished by IDB's correspondent in Cuba, INTERTEL;

b. lease and operate necessary connecting facilities in the U.S.; and

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[1] IDB notes that the prevailing accounting rate for telex services is $3.00 per minute which is typical for most Caribbean, Central American and Latin American countries. In comparison, the prevailing accounting rate for switched voice services between the U.S. and Cuba is $1.20 per minute. IDB explains that it is common for the telex accounting rate between two countries to be much higher than the switched voice accounting rate.

[2] Letter dated July 22, 1993, from Richard C. Beaird, Acting U.S. Coordinator and Director, Bureau of International Communications and Information Policy, U.S. Department of State to FCC Chairman James H. Quello.

[3] Letter dated March 14, 1994, from Richard C. Beaird, Acting U.S. Coordinator and Director, Bureau of International Communications and Information Policy, U.S. Department of State, to FCC Chairman Reed Hundt.

c. use the above facilities for the provision of direct telex service (46 circuits) between the U.S. and Cuba subject to the conditions set forth herein.

7. IT IS FURTHER ORDERED that the service authorized herein must be implemented within one year from the date of release of this order.

8. IT IS FURTHER ORDERED that the applicant shall submit reports on or before June 30, and December 31 of each year, and on the one-year anniversary of the notification of the grant of the this application in the Federal Register indicating the numbers of circuits activated by facility.

9. IT IS FURTHER ORDERED that this authorization is subject to the applicant's obtaining all necessary licenses and authorizations from the Departments of Treasury and Commerce.

10. IT IS FURTHER ORDERED that this order is subject to revocation without a hearing in the event the Department of State or FCC determines that the continuation of communications between the U.S. and Cuba is no longer in the national interest.

11. IT IS FURTHER ORDERED that, pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, IDB shall file and have in effect a tariff for the service authorized in this order before offering services to the public.

12. IT IS FURTHER ORDERED that IDB shall file copies of any operating agreements entered into by itself or its parent/affiliates with its correspondents within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. § 43.51.

13. IT IS FURTHER ORDERED that IDB shall file annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.

14. IT IS FURTHER ORDERED that IDB shall file a Section 214 application for any additional circuits it proposes to establish between the U.S. and Cuba.

15. Acceptance of this authorization shall be deemed acceptance of the conditions set forth herein.

16. This authorization is issued pursuant to Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PanAmSat	File Nos. CSS-88-003(M)
Licensee Corp.	CSS-91-003
Applications for	CSS-91-006
Final Authority to Construct Hybrid Separate System International Communications Satellites	

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: March 30, 1994; Released: April 22, 1994

By the Commission:

1. PanAmSat Licensee Corp. (PAS) has filed the above-captioned application for final authority to construct its Pacific Ocean Region satellite system (PAS-4), its second Atlantic Ocean Region satellite system (PAS-2) and its Indian Ocean Region satellite system (PAS-7).[1] In support of its request, PAS has filed information required by the *Separate Systems* decision for its second stage financial showing.[2] Since we find that PAS has complied with the financial requirements set forth in *Separate Systems*, we grant PAS's request for final authority to construct its PAS-4, PAS-2 and PAS-7 satellite systems.

2. In issuing PAS conditional authorizations to construct, launch and operate its PAS-4, PAS-2 and PAS-7 satellite systems, the Commission stated that the authorization was conditioned on PAS's subsequent submission of the second stage financial information required under the *Separate Systems* decision. We stated that, unless otherwise authorized, PAS could not expend any funds on the proposed system until it could demonstrate sufficient non-contingent funds to meet the construction, launch and first-year operational costs it projects for PAS-4, PAS-2 and PAS-7. The Commission required that PAS make its second stage financial showing no later than 60 days following the State Department's notification to the Commission that the United States has fulfilled its Article XIV(d) obligations and that the Commission may proceed with final authorization of the proposed system.[3]

3. On August 19, 1993, PAS submitted its second stage financial showing for its PAS-4, PAS-2 and PAS-7 satellite systems. In its submission, PAS states that its estimated total costs to construct, launch and operate its three satellites are approximately $666.3 million. Of this amount, according to PAS, $104.6 million has already been paid for construction and prelaunch expenses.[4] PAS claims that it has a total in cash, noncontingent partnership subscriptions, and vendor financing of over $607.6 million to cover the remainder of its costs for the three satellites.[5]

4. Along with its filing, PAS has submitted a letter from Chase Manhattan Bank of Connecticut, N.A. confirming receipt by the bank of approximately $425 million into an escrow account set up between PAS and the bank. PAS states that it raised $440 million through a public debt offering which closed on August 5, 1993. According to PAS, the offering resulted in two notes: one for $175 million, bearing interest at 9 3/4% per annum and the other for $265 million, bearing interest at 11 3/8% per annum. PAS will begin paying interest on the first note beginning in February, 1994, with semi-annual installments of approximately $8.5 million, and on the second note in February, 1999. PAS states that an additional $10 million represents monies on deposit in several other accounts. In

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[1] *Pan American Satellite Corporation*, 101 FCC 2d 1318 (1985) (*PAS Order*). On December 31, 1992, the Common Carrier Bureau consented to the assignment by Alpha Lyracom, d/b/a Pan American Satellite of its international space station authorizations, including its conditional authorizations for PAS-4, PAS-2 and PAS-7, to PanAmSat, L.P. (PAS, L.P.) *See Alpha Lyracom, d/b/a Pan American Satellite, Alpha Lyracom Space Communications, Inc., Cygnus Satellite Corp.*, 8 FCC Rcd 376 (Com. Car. Bur. 1992). The assignments were consummated on the same day. *See* Letter, dated December 31, 1992, from Joseph A. Godles, Attorney for PanAmSat, L.P. to Donna R. Searcy, Secretary, Federal Communications Commission. Alpha Lyracom, d/b/a Pan American Satellite filed amendments to the present applications on December 9, 1992, requesting that the name of the applicant be changed to PanAmSat, L.P. *See* File Nos. CSS-003-(M), CSS-91-003 and CSS-91-006. On January 28, 1994, the Common Carrier Bureau granted PAS, L.P.'s application for consent to the *pro forma* assignment of PAS, L.P.'s conditional authorizations for PAS-2, PAS-4 and PAS-7 to PanAmSat Licensee Corp. *See PanAmSat, L.P.*, 9 FCC Rcd 668 (Com. Car. Bur. 1994). The assignment was consummated on January 31, 1994. *See* Letter, dated February 1, 1994, from Joseph A. Godles, Attorney for PanAmSat Licensee Corp., to William F. Caton, Acting Secretary, Federal Communications Commission. Accordingly, the authority granted herein for final construction of the PAS-4, PAS-2 and PAS-7 satellite systems is granted to PanAmSat Licensee Corp.

[2] *See Establishment of Satellite Systems Providing International Communications*, 101 FCC 2d 1046, 1164 (1985).

[3] On October 5, 1993, the Commission received notification from the United States Department of State that the United States had fulfilled its obligations to consult with INTELSAT under Article XIV(d) of the INTELSAT Agreement, and that the Commission could proceed with final authorization of the PAS-4 system. *See* Letter, dated October 5, 1993, from Steven W. Lett, Director for Satellite and Cable Policy, Bureau of International Communications and Information Policy, U.S. Department of State, to George S. Li, Chief, International Facilities Division, Common Carrier Bureau, Federal Communications Commission. We grant final authority for PAS to launch and operate PAS-4 in a separate order. *See PanAmSat Licensee Corp.*, FCC 94-78 (adopted March 30, 1994).

[4] The Commission has permitted PAS to spend up to $185.75 million for construction and pre-launch expenses for PAS-4. *See PanAmSat, L.P.*, 8 FCC Rcd 5120 (1993). In addition, the Bureau has given PAS permission to spend up to $103.25 million and $90.75 million on construction and pre-launch expenses for PAS-2 and PAS-7, respectively.

[5] In addition, PAS predicts that its earnings on its PAS-1 satellite should be well over $30 million per annum through 1995.

addition, PAS states that it has received $100 million and will receive another $100 million due it as a part of a "Purchase Agreement" committing Grupo Televisa to purchase $200 million in partnership assets in PAS.[6]

5. Finally, PAS states that it has agreed with Hughes Aircraft Company (Hughes) to defer approximately $72.6 million in construction costs, which will be paid in the form of "Supplemental Incentives" and "Incentives Obligations." Under the agreement with Hughes, the Supplemental Incentives and Incentives Obligations are payable to Hughes after delivery and in-orbit performance tests, respectively. PAS states that the Supplemental Incentives are due in monthly installments of $77,088 per satellite, and that the amount to be paid per satellite for one year after launch would be slightly over one million dollars, assuming delivery occurs approximately 45 days prior to launch. According to PAS, the Incentives Obligations are due in monthly installments of $197,369 per satellite, and the amount required to be paid per satellite through one year after launch would be slightly under $2.1 million per satellite, assuming in-orbit performance tests are completed within 45 days of launch.

6. Based on this information, we find that the showing by PAS satisfies the requirement that it show sufficient noncontingent funds to cover the costs of construction, launch and first-year operation of its PAS-4, PAS-2 and PAS-7 satellite systems.

7. Accordingly, IT IS ORDERED that PAS is granted final authority to construct its PAS-4, PAS-2 and PAS-7 satellite systems, and that final authorization for launch and operation of PAS-2 and PAS-7 shall not be issued unless and until: (1) one or more foreign authorities authorize use of this system and enter into consultation procedures with the United States Party or Signatory under Article XIV(d) of the INTELSAT Agreement to ensure technical compatibility and to avoid significant economic harm; (2) the Department of State informs the Commission that the United States has completed its Article XIV(d) obligations and that the Commission may proceed with final authorization of the proposed system; and (3) the Commission grants final authorization.

8. IT IS FURTHER ORDERED that PAS shall file with the Commission no later than one year from the release date of this authorization information showing that it is making all reasonable efforts toward obtaining foreign approval to provide services via its proposed PAS-2 and PAS-7 systems.

9. IT IS FURTHER ORDERED that this Memorandum Opinion, Order and Authorization is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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[6] The Purchase Agreement was part of the assignment of space station and earth station licenses to PAS, L.P. *See Alpha Lyracom, d/b/a Pan American Satellite, Alpha Lyracom Space Communications, Inc., Cygnus Satellite Corp., supra* note 1.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PanAmSat Licensee Corp. File No. CSS-93-008

Application for Modification of
Conditional Authority to Construct,
Launch and Operate a Hybrid Separate
System International Communications
Satellite (PAS-4)

Application for File No. CSS-91-003
Final Authority to
Launch and Operate a Hybrid Separate
System International Communications
Satellite (PAS-4).

MEMORANDUM OPINION,
ORDER AND AUTHORIZATION

Adopted: March 30, 1994; Released: April 22, 1994

By the Commission:

I. INTRODUCTION

1. PanAmSat Licensee Corp. (PAS) has filed the above-captioned applications for modification of its conditional authorization to construct, launch and operate an international communications satellite system,[1] and for final authority to launch and operate its PAS-4 satellite system. We placed the application for modification on public notice on June 23, 1993. Pacific Satellite, Inc. (PACSTAR) filed a Petition to Deny or Condition PAS's application for modification of its license,[2] requesting that the Commission ensure that PAS will satisfactorily coordinate PAS-4 with PACSTAR, which claims an orbital slot 1.5^0 away from the orbital slot to which PAS proposes in this application to move PAS-4. For the reasons set forth below, we grant PAS's application to modify its PAS-4 satellite system, as well as its request for final authority to launch and operate PAS-4 at the 191^0 West Longitude (W.L.) orbital location. We accordingly deny PACSTAR's Petition to Deny or Condition PAS's application.

II. DISCUSSION

A. PAS' Modification Request

2. In its request for modification, PAS proposes to 1) change the design of its proposed spacecraft and 2) change its temporarily-assigned orbital location from 192^0 W.L. to 191^0 W.L. PAS states that in selecting Hughes to construct the PAS-4 satellite, it has had to change the technical design from that approved in the Commission's conditional authorization of PAS.

3. In its application, PAS describes various technical changes which do not affect its qualifications under the *Separate Systems* decision. PAS-4 will be a Hughes-601 satellite with Ku-band and C-band capability, and will be launched via an Ariane-42P launch vehicle. The Ku-band frequencies on PAS-4 have been slightly altered to make more efficient use of the POR spectrum. Finally, the new satellite substitutes one larger spot beam for all previous C-band beams serving the POR, with a resulting increase in coverage.[3]

4. PAS asserts that the change in orbital locations will serve the public interest because it will provide PAS with an additional 1^0 margin of look angle for TT&C operations and an additional 1^0 spacing between PAS-4 and PACSTAR's orbital location at 192.55^0 W.L. PAS states that the change in orbit position is possible now because the Commission dismissed the application of McCaw Space Technologies, Inc., which had a conditional license to operate at 190^0 W.L. at the time PAS applied for its conditional authority.[4]

5. In its petition to deny or condition the grant of PAS's application, PACSTAR identifies itself as "a regional Asia-Pacific satellite system... designed to address the expanding demand for satellite transponder capacity in the Pacific

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[1] *Pan American Satellite Corporation*, 101 FCC 2d 1318 (1985) (*PAS Order*). On December 31, 1992, the Common Carrier Bureau consented to the assignment by Alpha Lyracom, d/b/a Pan American Satellite of its international space station authorizations, including its conditional authorization for PAS-4, to PanAmSat, L.P. (PAS, L.P.) *See Alpha Lyracom, d/b/a Pan American Satellite, Alpha Lyracom Space Communications, Inc., Cygnus Satellite Corp.*, 8 FCC Rcd 376 (Com. Car. Bur. 1992). The assignments were consummated on the same day. *See* Letter, dated December 31, 1992, from Joseph A. Godles, Attorney for PanAmSat, L.P. to Donna R. Searcy, Secretary, Federal Communications Commission. Alpha Lyracom, d/b/a Pan American Satellite filed an amendment to the present application on December 9, 1992, requesting that the name of the applicant be changed to PanAmSat, L.P. *See* File No. CSS-003-(M). On January 28, 1994, the Common Carrier Bureau granted PAS, L.P.'s application for consent to the *pro forma* assignment of PAS, L.P.'s conditional authorization for PAS-4 to PanAmSat Licensee Corp. *See PanAmSat, L.P.*, 9 FCC Rcd 668 (Com. Car. Bur. 1994). The assignment was consummated on January 31, 1994. *See* Letter, dated February 1, 1994, from Joseph A. Godles, Attorney for PanAmSat Licensee Corp., to William F. Caton, Acting Secretary, Federal Communications Commission. On February 16, 1994, PAS, L.P. amended its application for modification to reflect this change. *See* File No. CSS-93-008. Accordingly, the consent contained herein for modification of the PAS-4 conditional authorization is granted to PAS Licensee Corp.

[2] PAS submitted a motion to strike PACSTAR's petition, which PACSTAR opposed. PAS submitted a reply to PACSTAR's opposition, to which PACSTAR submitted a reply. PAS responded to PACSTAR's reply, and PACSTAR submitted an opposition to PAS' response. We accept all pleadings for the record.

[3] *See* Letter, dated October 29, 1993, from Joseph A. Godles, Attorney for PanAmSat, L.P., to William F. Caton, Acting Secretary, Federal Communications Commission.

[4] *See McCaw Space Technologies, Inc.*, 8 FCC Rcd 804 (1993); *McCaw Space Technologies, Inc.*, DA 93-1070 (released September 8, 1993).

Ocean Region (POR) as well as in Papua New Guinea."[5] PACSTAR adds that the government of Papua New Guinea (PNG) owns 60% and U.S. investors own 40% of PACSTAR's equity. PACSTAR states that its host country is PNG which under International Telecommunications Union (ITU) procedures has achieved priority rights to use certain C-Band and Ku-Band frequencies on its PACSTAR satellites in the 192.55^0 W.L. and 175^0 W.L. orbital positions for which it has successfully completed coordination in accordance with ITU Rules. PACSTAR claims that any administration planning a network that might affect the PACSTAR system is therefore required to coordinate with PNG. As a result, PACSTAR claims, it has priority over the proposed PAS system at the 192^0 W.L. orbital location and at the 191^0 W.L. location.[6] PACSTAR concludes, furthermore, that PAS's positions appear technologically to create irremediable interference with PACSTAR's position at 192.55^0 W.L.

6. PACSTAR asserts that PAS has an obligation: to cooperate with the U.S. government in coordinating PAS-4 with PACSTAR; to suggest a solution to the problem of interference; and to permit the U.S. government to abandon the orbital position if PAS fails to suggest such a solution. PACSTAR states that the Commission has a responsibility to deny PAS's application if PAS cannot suggest a technological solution to the interference problem. PACSTAR alleges that the Commission would violate the international Radio Regulations by permitting PAS to launch its satellite into any orbital location not already occupied by another nation's satellite, if that location were not fully coordinated. Finally, PACSTAR notes that the U.S., which has the most geosynchronous orbital slots of any nation, has much to lose by setting a precedent that would lead to the unravelling of the ITU Rules and procedures.[7]

7. In response, PAS argues that PACSTAR's petition is procedurally defective[8] and that PACSTAR may lack standing to challenge PAS's modification request, since PACSTAR did not object to PAS's request for conditional authorization when PAS proposed to place PAS-4 only one-half degree away from PACSTAR's claimed orbital location.[9] PAS explains that the ITU, and not the FCC licensing mechanism, is the appropriate forum for PACSTAR to pursue its interference concerns, and that PAS is cooperating with the U.S. government to ensure that PAS is fully coordinated with other satellite systems. PAS notes further that under ITU procedures, it is permitted to move its orbital location within the arc allotted by the ITU, and is required only to notify the ITU of its move.[10] Finally, PAS argues that PACSTAR has not made any progress towards constructing and implementing its system, and that PACSTAR is merely using ITU and FCC procedures to delay PAS.

8. The only issue raised by PAS's application for modification and PACSTAR's petition is the effect of PAS's proposed modification on PAS's ability to successfully coordinate PAS-4 with any future PACSTAR satellite system. PACSTAR does not claim that the proposed modification will make coordination with PACSTAR any more difficult for PAS than if PAS-4 remained at 192^0 W.L.[11] Indeed, we agree with PAS that the proposed modification should facilitate coordination discussions with PACSTAR.[12] Thus, we reject PACSTAR's contention that granting PAS's modification request would be contrary to the public interest. As discussed below, moreover, we do not believe that the Commission's obligations under the international Radio Regulations require it to deny PAS's request for final authorization.

B. PAS's Request for Final Authority

1. Separate Systems Requirements

9. In issuing PAS conditional authorizations to construct, launch and operate its PAS-4 satellite system, the Commission stated that the authorization was conditioned on PAS's subsequent submission of the second stage financial information required under the *Separate Systems* decision. We stated that, unless otherwise authorized, PAS could not expend any funds on the proposed system until it could demonstrate sufficient non-contingent funds to meet the construction, launch and first-year operational costs it projects for PAS-4. The Commission required that PAS make its second stage financial showing no later than 60 days following the State Department's notification to the Commission that the United States has fulfilled its Article XIV(d) obligations and that the Commission may proceed with final authorization of the proposed system.

10. In a separate order, we find that PAS has fulfilled the *Separate Systems* second stage financial showing requirement for its PAS-4 satellite system.[13] On October 5, 1993, the Commission received notification from the United States Department of State that the United States had fulfilled its obligations to consult with INTELSAT under Article XIV(d) of the INTELSAT Agreement, and that the Commission could proceed with final authorization of the PAS-4 system.[14] The consultation covered the PAS-4 system at the 169^0 E.L. (191^0 W.L.) orbit position, and was limited

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[5] PACSTAR Petition to Deny or in the Alternative to Condition Approval on Showing of No Interference of Pacific Satellite, Inc. (*PACSTAR Petition*), at 1.

[6] PACSTAR admits that it did not file against PAS's original application for conditional authorization, which requested an orbital location only .5^0 away from PACSTAR's.

[7] PACSTAR Opposition to PAS's Motion to Strike.

[8] PAS claims that, contrary to the Commission's Rules pertaining to petitions to deny, PACSTAR failed to serve PAS and failed to timely serve PAS's attorney with a copy of the pleading.

[9] PACSTAR notes that it did not oppose the situation in PAS's original application because it assumed the U.S. government would not permit PAS to proceed without coordination.

[10] PACSTAR disputes this claim, noting that such a move can only occur after agreement between affected administrations to resolve interference differences. *See* PACSTAR Opposition at 7-8.

[11] PACSTAR claims that the proposed change of 1^0 has "significant ramifications for all other satellites in proximity." *PACSTAR Opposition* at 8. PACSTAR does not, however, elaborate on this assertion.

[12] *See* PAS Reply to Motion to Strike (*PAS Reply*) at 2.

[13] *See PanAmSat, L.P.*, FCC 94-77 (adopted March 30, 1994).

[14] *See* Letter, dated October 5, 1993, from Steven W. Lett, Director for Satellite and Cable Policy, Bureau of International Communications and Information Policy, U.S. Department of State, to George S. Li, Chief, International Facilities Division, Common Carrier Bureau, Federal Communications Commission.

to service between the United States and Hong Kong and between the United States and Australia through mid-2009.[15]

2. International Coordination Issues

11. Although we reject PACSTAR's request to deny or condition PAS's request for modification of PAS-4 on the basis of insurmountable interference with PACSTAR's proposed satellite, we agree that the orderly and efficient use of the orbital spectrum is in the U.S. public interest, especially given the significant U.S. presence in the international satellite services market. We note additionally that the Commission recognizes the obligation of all ITU Members to comply with the international Radio Regulations. Indeed, we have noted that "any assignment of an orbital position by this Commission will be subject to international coordination efforts, and the accommodation of future requirements of the U.S. and other countries may require a further reduction in orbital spacing or other adjustments that may require a satellite to be repositioned."[16] As a consequence, we stated that we would retain the right to order U.S.-licensed separate satellite systems repositioned on thirty days' notice.[17] This condition also applies to PAS-4.

12. We do not believe, however, that it is necessary to delay our licensing of PAS pending successful coordination with PACSTAR. Nor do we agree with PACSTAR that the international Radio Regulations require the Commission to await successful coordination before authorizing PAS-4. The international Radio Regulations merely require the U.S. administration to follow certain procedures and to submit coordination information relating to satellites it intends to make operational.[18] The Regulations do not affect the Commission's jurisdiction to decide whether or not to authorize the launch and operation of a U.S. separate satellite system.

13. We agree with PAS that coordination between U.S. and other non-U.S. satellite systems should be addressed in the context of the ITU. As the Commission made clear in the *Separate Systems* decision, international coordination will not interfere with the Commission's ability to license separate satellite systems once an applicant has met the requirements established by that decision.[19] While the Commission will continue to take steps to ensure that all U.S.-licensed satellite systems are coordinated as necessary pursuant to the Radio Regulations, the U.S. government's obligation to abide by the Regulations can be satisfied without making the Regulations a part of the Commission's licensing procedures. Any appropriate coordination between PAS and any future satellite system can be accomplished through the efforts of the U.S. government and the relevant administration, with the cooperation of the satellite system providers.[20]

III. CONCLUSION

14. We therefore find that PAS has satisfied all of the conditions imposed on its conditional construction permit for PAS-4 and that it may proceed with the construction, launch and operation of its PAS-4 satellite without any further action by this Commission.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that the conditions imposed on PAS's conditional construction permit for PAS-4 have been satisfied and PAS may proceed to launch and operate its PAS-4 satellite to provide service between the United States, Hong Kong and Australia subject to the conditions specified below.

16. IT IS FURTHER ORDERED that this order only applies to PAS's provision of service over PAS-4 between the United States, Hong Kong and Australia consistent with the INTELSAT Article XIV(d) consultation completed in October, 1993.[21] Any service between the United States and other locations as well as the provision of domestic communications services to other locations will require a new Article XIV consultation.

17. IT IS FURTHER ORDERED that PAS's application for modification of its conditional authorization for PAS-4 IS GRANTED, and PAS is temporarily assigned the orbital location at 191^0 W.L. for operation of PAS-4.

18. IT IS FURTHER ORDERED that PAS may provide through the sale or lease of transponders or space segment capacity on PAS-4: (1) all services not interconnected with the public switched network (including private line services and video and audio transmission services); (2) emergency restoration services; (3) up to 1250 64-kbps equivalent circuits interconnected with the public switched network per satellite for the provision of switched international telecommunications services; and (4) interconnected private line circuits.[22]

19. IT IS FURTHER ORDERED that applicant shall file with the Commission copies of any operating agreements it enters into with its foreign correspondents within 30 days

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[15] *See* BG-98-3; BG-98-15; BG-98-34.

[16] *Separate Systems*, 101 FCC 2d at 1176.

[17] *Id.* at 1176. We noted in addition that we will "carefully consider the effects of requiring a satellite to be relocated to a different orbital position." *Id.*

[18] *See, e.g.*, ITU Radio Regulations, Article 11.

[19] *Separate Systems*, 101 FCC 2d at 1159, 1168. Contrary to PACSTAR's assertion, the Commission has explicitly rejected application of the FCC's 2^0 spacing policy to international coordination. *See id.* at 1168.

[20] *See* 47 C.F.R. §25.111. That provision requires that "[a]pplicants, permittees and licensees of radio stations governed by [Part 25]... provide the Commission with all information it requires for the Advance Publication, coordination and notification of frequency assignments pursuant to the international Radio Regulations..." *Id.*

[21] *See* BG-98-3, BG-98-15, BG-98-34.

[22] *See Permissible Services of U.S. Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (INTELSAT)*, 7 FCC Rcd 2313 (1992), *recon. dismissed*, 8 FCC Rcd 5122 (1993); *Permissible Services of U.S. Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (INTELSAT)*, 9 FCC Rcd 347 (1994) (U.S. separate satellite systems may provide up to 1,250 64-kbps equivalent circuits per satellite for the provision of public switched services); *Alpha Lyracom, d/b/a Pan American Satellite*, DA 94-192 (released March 8, 1994) (modifying PAS's license to permit interconnected private line circuits over PAS-1).

of execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. § 43.51.

20. IT IS FURTHER ORDERED that the Commission shall retain jurisdiction over the use of all space segment within PAS's system to ensure compliance with the conditions of this authorization and with the Commission's rules, regulations and policies.

21. IT IS FURTHER ORDERED that the temporary assignment of any orbital locations to PAS is subject to change by summary order of the Commission on 30 days notice and does not confer any permanent right of the use of the orbit or spectrum. Such a change may be ordered, *inter alia,* in the event that the national security or the public interest so requires, or to implement any of the objectives or policies set forth in the Commission's *Separate Systems* order, 101 FCC 2d 1046 (1985). Neither this authorization nor any right granted by this authorization, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, or by transfer of control of any corporation or partnership holding this authorization, to any person except upon application to the Commission and upon a finding by the Commission that the public interest, convenience and necessity will be served thereby.

22. IT IS FURTHER ORDERED that this Memorandum Opinion, Order and Authorization is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 22, 1994

CITIZENS UTILITIES COMPANY, GTE NORTHWEST, INC., AND GTE CALIFORNIA, INC. FILED A JOINT PETITION FOR WAIVER OF THE DEFINITION OF "STUDY AREA" IN THE APPENDIX-GLOSSARY OF PART 36 OF THE COMMISSION'S RULES
AAD 94-37

Comment Date: May 13, 1994
Reply Date: May 27, 1994

On April 4, 1994, Citizens Utilities Company (CUC), GTE Northwest, Inc. (GTENWI), and GTE California, Inc. (GTECI) filed a joint petition for waiver of the definition of "study area" as set forth in Appendix-Glossary of Part 36 of the Commission's rules. This waiver would allow the parties to reflect the changes in their study area boundaries that would result from GTENWI and GTECI's sale of ten telephone exchanges in Oregon and California to CUC. The parties state that the Oregon and California regulatory commissions do not oppose the proposed changes in the study areas.

Interested parties are to file comments on this petition for waiver by **May 13, 1994**, and reply comments by **May 27, 1994**, with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Comments should reference AAD 94-37. Four (4) copies should also be sent to Adrian Wright, Common Carrier Bureau, 2000 L Street, N.W., Room 812, Washington, D.C. 20554, and one (1) copy to the Commission's contractor for public service records duplication: International Transcription Service (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the petition can be obtained from the Accounting and Audits Division's public reference room, 2000 L Street, N.W., Room 812, Washington, D.C.; copies are also available from ITS at (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally,* 47 C.F.R. §§ 1.1200-1.1216. For further information contact Adrian Wright at (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 22, 1994

US WEST COMMUNICATIONS, INC., SKYLINE TELECOM, AND SOUTH CENTRAL UTAH TELEPHONE ASSOCIATION, INC. FILED JOINT PETITION FOR WAIVER OF STUDY AREA DEFINITION (PART 36 APPENDIX-GLOSSARY) AND PRICE CAP "ALL OR NOTHING" RULE (SECTION 61.41(c) AAD 94-38

Comment Date: May 18, 1994
Reply Date: June 2, 1994

On April 8, 1994, US West Communications, Inc. (US West), Skyline Telecom (Skyline), and South Central Utah Telephone Association, Inc. (South Central) filed a joint petition for waiver of the definition of "study area" as set forth in Appendix-Glossary of Part 36 of the Commission's rules. This waiver would allow the parties to reflect the changes in their study area boundaries that would result from US West's sale of eight telephone exchanges in Utah to Skyline and South Central. Skyline and South Central also seek waiver of Section 61.41 of the Commission's price cap rules, 47 C.F.R. § 61.41, to exempt them from the price cap "All or Nothing" rule and allow them to continue to operate as cost companies in the National Exchange Carrier Association's (NECA) common line and traffic sensitive pools. The parties state that this transaction is pending before the Utah Public Service Commission.

Interested parties are to file comments on this petition for waiver by **May 18, 1994**, and reply comments by **June 2, 1994**, with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Comments should reference AAD 94-38. Four (4) copies should also be sent to Adrian Wright, Common Carrier Bureau, 2000 L Street, N.W., Room 812, Washington, D.C. 20554, and one (1) copy to the Commission's contractor for public service records duplication: International Transcription Service (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the petition can be obtained from the Accounting and Audits Division's public reference room, 2000 L Street, N.W., Room 812, Washington, D.C.; copies are also available from ITS at (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally*, 47 C.F.R. §§1.1200-1.1216. For further information contact Adrian Wright at (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Luanne Brown NAL/Acct. No. 215DT0034
Caro, Michigan

ORDER

Adopted: April 12, 1994; Released: April 22, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Luanne Brown filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $4,000 issued for violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. Section 503(b), and Section 325(a)of the Commission's Rules. For the reasons noted below, we are cancelling the monetary forfeiture.

II. BACKGROUND

2. On September 30, 1992, the Farmington Hills, MI Field Office issued a Notice of Apparent Liability (NAL) to Luanne Brown. The penalty was imposed for operation of a radio without a radio station license and transmission of false Maydays by her juvenile son. Ms. Brown's son, along with 2 other violators, all minors, was located and observed playing with the radio microphone. Based on the response from Ms. Brown, the Michigan Field Office issued a Notice of Forfeiture (NOF) for $4,000 on November 24, 1992. Ms. Brown now appeals. The petitioner contends that the NAL should be cancelled.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments as well as review of the NAL and NOF, we are cancelling the forfeiture in light of the facts unique to this case.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. §503(b), and Section 1.106 of the Rules, 47 C.F.R. §1.106, the petition for reconsideration is GRANTED and the monetary forfeiture is CANCELLED.

5. IT IS FURTHER ORDERED that a copy of this Order shall be sent by certified mail, return receipt requested to Ms. Luanne Brown and counsel.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 25, 1994

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON US WEST'S PETITION FOR WAIVER OF COMPUTER III REQUIREMENTS CC DOCKET NO. 90-623

On April 4, 1994, US West Communications, Inc. (US West) petitioned the Commission for a waiver of §64.702 of the Commission's rules. US West seeks a waiver of the Commission's *Computer III* Comparably Efficient Interconnection (CEI) requirements in order to offer a reverse-search capability in conjunction with US West's Electronic White Pages (EWP) offering.

US West states that its current EWP service is federally tariffed as a basic common carrier offering. US West wishes to add a reverse-search capability to its EWP offering, similar to the capability now provided by other electronic directory competitors. US West states that an EWP reverse-search capability would permit a customer, purchasing US West's basic EWP service, to search the customer record by fields other than name. US West plans to integrate this service with its basic EWP service.

US West argues that the waiver is necessary because the costs of the service would be unreasonable if it were to comply with the Commission's CEI requirements and US West's current Open Network Architecture Plan. In addition, US West argues that the waiver is in the public interest because it provides customers with an efficient service as a result of efficient integration. US West adds that it will account for the costs of this service pursuant to its Part 32 Cost Allocation Manual.

Interested parties may file comments on this petition for waiver **May 9, 1994**, and reply comments by **May 24, 1994**, with the Secretary, FCC 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the petition for waiver can be obtained from ITS, Inc. at (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally*, 47 C.F.R. §§1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-1300.

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON BELL ATLANTIC'S PETITION FOR WAIVER OF §64.702(e)

Released: April 25, 1994

April 1, 1994, the Bell Atlantic Telephone Companies (Bell Atlantic) petitioned the Commission for waiver of §64.702(e) of the Commission's rules. Bell Atlantic seeks the waiver to permit it to offer Asymmetric Digital Subscriber Line (ADSL) equipment on end-user premises to customers under tariff in connection with ADSL-based video dialtone service. Bell Atlantic states that ADSL equipment qualifies as customer premises equipment (CPE) since it is located on each end-users premises and therefore cannot be offered under tariff without a waiver.

Bell Atlantic describes ADSL as a new technology which multiplexes and permits transmission of high speed one-way digital and two-way signaling and control channels on an integrated basis with traditional voice and data services. Bell Atlantic states that it will be able to serve multiple video programmers on an efficient basis over existing facilities without requiring additional loop facilities and installation investments.

Bell Atlantic states that the waiver will make it possible for many video information providers, especially smaller video programmers, to use ADSL-based video dialtone service to send programming to end-users consistent with Commission video dialtone policies favoring competition in the video marketplace and diversity of video services. Bell Atlantic further states that it will promote efficiencies by fairly allocating costs for, and eliminating unnecessary and inefficient placement of, ADSL equipment.

Bell Atlantic states that its waiver request demonstrates that offering CPE functions as part of a network service will increase efficiency, or make technically possible the delivery, of a particular service, and that provision of such functions through unregulated CPE will not permit comparable efficiencies or service offerings.

Interested parties may file comments on this petition for waiver **May 12, 1994**, and reply comments by **May 27, 1994**, with the Secretary, FCC 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the petition for waiver can be obtained from ITS, Inc. at (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally*, 47 C.F.R. §§1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-1300.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON BELL ATLANTIC'S PETITION FOR WAIVER OF §62.112

Released: April 25, 1994

On April 4, 1994, the Bell Atlantic Telephone Companies (Bell Atlantic) petitioned the Commission for a waiver of §62.112 of the Commission's rules. Bell Atlantic seeks a waiver of the Commission's rules to create new service elements in order to introduce a new service for switched transport described as Facilities Management Service (Switched FMS). Bell Atlantic states that it is already offering a similar arrangement for special access services (Special FMS).

Bell Atlantic states that the Switched FMS is an optional service that will allow customers to turn over day-to-day management of their direct-trunked transport facilities to Bell Atlantic. Bell Atlantic further states that this service will permit Bell Atlantic to offer customers a complete network management option for both switched and special access facilities.

Bell Atlantic states that the waiver of Part 69 of the rules is necessary to meet customer demand. According to Bell Atlantic, Special FMS customers have requested a similar feature for switched access services. Bell Atlantic states that it will be able to capitalize on the efficiencies possible with the maintenance of a customer's entire network and to pass those efficiencies to FMS customers in the form of lower access charges.

Interested parties may file comments on this petition for waiver **May 23, 1994**, and reply comments by **June 7, 1994**, with the Secretary, FCC 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the petition for waiver can be obtained from ITS, Inc. at (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally*, 47 C.F.R. §§1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-1300.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 94-1

In the Matter of

Price Cap Performance Review
for Local Exchange Carriers

Motion for Extension of Time

FEDERAL COMMUNICATIONS COMMISSION

A. Richard Metzger, Jr.,
Acting Chief, Common Carrier Bureau

ORDER

Adopted: April 6, 1994; Released: April 7, 1994

By the Acting Chief, Common Carrier Bureau:

1. On March 30, 1994, the United States Telephone Association (USTA) filed a motion for extension of time to file comments in response to the Notice of Proposed Rulemaking[1] in the above-captioned proceeding. Comments are scheduled to be filed by April 18, 1994 and replies by May 17, 1994. USTA seeks an extension until May 9, 1994 for comments and until June 8, 1994 for replies.

2. USTA states that the Commission has requested that interested parties submit detailed information and quantitative data on a wide variety of issues, ranging from the broad policy goals underlying the price cap plan, to specific details of the plan, to transition issues related to increasing competition in access markets. USTA indicates that it is the principal trade association representing the entire local exchange carrier industry and views this proceeding as critically important to determining the future of the telecommunications industry. USTA asserts that the quantification and other analyses that it will be submitting cannot be completed in time for inclusion in comments to be filed on April 18. Therefore, it argues, an extension of time is necessary for USTA to gather and analyze relevant data and to allow its consultants to prepare their reports and obtain the approval of USTA's membership before those reports can be incorporated in its comments.

3. The Common Carrier Bureau has reviewed USTA's request for extension of time and has determined that good cause has been shown to grant all interested parties additional time, until May 9, 1994, to file comments and until June 8, 1994 to file reply comments.

4. Therefore, IT IS ORDERED that the United States Telephone Association's motion for extension of time IS GRANTED to the extent specified herein.

[1] Price Cap Performance Review for Local Exchange Carriers, Notice of Proposed Rulemaking, CC Docket No. 94-1, FCC No. 94-10, rel. Feb. 16, 1994.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications Transmittal No. 6684
Tariff F.C.C. No. 9

ORDER

Adopted: April 6, 1994; Released: April 6, 1994

By the Chief, Tariff Division, Common Carrier Bureau:

1. On March 24, 1994, AT&T Communications (AT&T) filed the captioned tariff revisions on 14 days' notice. By this filing, AT&T proposes to increase the rates for its analog private line services. The transmittal is currently scheduled to take effect on April 7, 1994.

2. On March 30, 1994, Aeronautical Radio, the American Petroleum Institute, and the Ad Hoc Telecommunications Users Committee filed petitions to reject or suspend and investigate Transmittal No. 6684. AT&T filed a reply on April 4, 1994.

3. The Common Carrier Bureau has reviewed AT&T Communications Transmittal No. 6684 and the related pleadings. We conclude that the filing does not warrant rejection because it does not, on its face, conflict with a statute or with an agency regulation or order. We further conclude that the petition does not demonstrate that an investigation is warranted at this time.

4. Accordingly, IT IS ORDERED that the petitions to reject or suspend and investigate AT&T Communications Tariff F.C.C. No. 9, Transmittal No. 6684, filed by Aeronautical Radio, the American Petroleum Institute, and the Ad Hoc Telecommunications Users Committee ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 93-129

In the Matter of

800 Data Base Access Tariffs and the

800 Service Management System Tariff

ORDER

Adopted: April 15, 1994; Released: April 15, 1994

By the Chief, Tariff Division, Common Carrier Bureau:

1. On February 14, 1994, the Tariff Division released an order,[1] granting an extension of time to file additional cost support and other pleadings in the above-captioned investigation of the 800 data base access tariffs. Among other things, that order set deadlines by which interested parties had to file oppositions or comments on the local exchange carriers' (LECs) direct cases. Currently, oppositions or comments are due on April 15, 1994, and rebuttals are due on April 28, 1994. On April 15, 1994, the Ad Hoc Telecommunications Users Committee and the National Data Corporation (Petitioners) filed a motion to extend the time for filing comments by an additional week, until April 22, 1994. Petitioners state that, for reasons beyond their control, the report of the economic consultants whom they retained to analyze the LECs' direct cases was not ready for filing by April 15, 1994.

2. The Division has reviewed Petitioners' request for an extension of time and has determined that good cause has been shown to grant an extension to all parties. Therefore, interested parties who wish to file oppositions to or comments on the direct cases in this investigation must do so by April 22, 1994. Rebuttals to oppositions or comments will be due on May 5, 1994.

3. Accordingly, IT IS ORDERED that the motion for extension of time filed by Ad Hoc Telecommunications Users Group and National Data Corporation IS GRANTED, and the deadlines for all parties in this proceeding to file pleadings responding to direct cases, and rebuttals, is extended as specified in paragraph 2 of this order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

[1] *800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order,* CC Docket 93-129, 9 FCC Rcd 974 (1994).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications Transmittal No. 6535
Tariff F.C.C. No. 12
Option 51

ORDER

Adopted: April 6, 1994; Released: April 6, 1994

By the Chief, Tariff Division, Common Carrier Bureau:

1. On February 24, 1994, AT&T Communications (AT&T) filed the captioned tariff revisions on 14 days' notice. This filing reduces the basic charges in the tariff. The transmittal is currently scheduled to take effect on April 7, 1994.

2. On March 3, 1994, Public Service Enterprises of Pennsylvania, Inc., (PSE) filed a petition to reject or suspend and investigate Transmittal No. 6535 which was accompanied by a motion to accept its late-filed pleading.[1] AT&T filed a reply on March 7.

3. The Common Carrier Bureau has reviewed AT&T Communications Transmittal No. 6535, PSE's petition, and AT&T's reply. We conclude that the filing does not warrant rejection because it does not, on its face, conflict with a statute or with an agency regulation or order. We further conclude that the petition does not demonstrate that an investigation is warranted at this time.

4. Accordingly, IT IS ORDERED that the petition to suspend and investigate AT&T Communications Tariff F.C.C. No. 12, Transmittal No. 6535, filed by Public Service Enterprises of Pennsylvania IS DENIED.

5. IT IS FURTHER ORDERED that the motion to accept the late-filed petition of Public Service Enterprises of Pennsylvania IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

[1] The Bureau will grant this motion as no party will be harmed by the delay.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Southwestern Bell Telephone Company — Transmittal No. 2316

Revisions to Tariff F.C.C. No. 73

ORDER

Adopted: April 14, 1994; Released: April 15, 1994

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On December 17, 1993, Southwestern Bell Telephone Company (SWB) filed Transmittal No. 2316 to revise its Tariff F.C.C. No. 73. This transmittal would allow SWB to institute rate ranges (expressed in terms of maximum and minimum rates) for its MegaLink Data special access services.[1] The actual rate that SWB will apply "at a given point in time will vary depending on the locality, company, term of the arrangement, date the arrangement was originally entered into, and volume characteristics.[2]

2. SWB indicates in Transmittal 2316 that the tariff language it proposes is similar to Section 4.1.1 of Teleport Communications Group Operating Companies, Inc. (TCG) Tariff F.C.C. No. 1.[3] SWB states that the Common Carrier Bureau (Bureau) rejected the requests of SWB and other carriers to investigate TCG Tariff No. 1 and similar tariffs of other carriers.[4] SWB declares that it wishes to take advantage of the flexibility that the Commission allows TCG and other nondominant carriers.[5] SWB maintains that its constitutional right to equal protection of the laws requires the Commission to afford SWB the same flexibility given nondominant carriers to institute rate ranges in its tariff filing.[6] Transmittal 2316 is scheduled to become effective April 16, 1994.

3. On January 3, 1994, Sprint Communications Company L.P. (Sprint), MCI Telecommunications Corporation (MCI), and WilTel, Inc. (WilTel) filed petitions to reject Transmittal 2316. SWB filed a reply on January 6, 1994. For the reasons discussed below, we reject SWB's Transmittal 2316.

II. SUMMARY OF PLEADINGS

4. *Petitions.* Sprint and WilTel assert that SWB is prohibited from filing rate range tariffs because only nondominant carriers are permitted to implement rate range tariffs under the *Rate Range Order*.[7] Also, WilTel and MCI contend that SWB's proposal to institute rate ranges constitutes individual case basis pricing in violation of the *ICB Orders*.[8] In addition, WilTel, Sprint, and MCI contend that SWB's rate range proposal constitutes unreasonable discrimination in violation of Section 202(a) of the Act.[9]

5. *Reply.* SWB argues that because rate range tariffs filed by nondominant common carriers do not violate Section 202(a) of the Act, the Commission should find that SWB's rate range tariff proposal does not constitute unreasonable discrimination insofar as "Section 202(a) . . . does not distinguish between classes of carriers."[10] Also, SWB asserts that the *ICB Orders* did not preclude all future efforts toward pricing flexibility by local exchange carriers.[11] In addition, SWB reiterates that it is entitled to the same pricing flexibility as its nondominant competitors, as a matter of equal protection under the U.S. Constitution.[12]

III. DISCUSSION

6. As an initial matter, the tariff language proposed in Transmittal 2316 is unclear and ambiguous in violation of Sections 61.2 and 61.54(j) of the Commission's Rules, 47 C.F.R. §§ 61.2 and 61.54(j). Section 61.2 of the Rules requires that tariff publications contain clear and explicit explanatory statements regarding the rates and regulations in the tariff. Section 61.54(j) of the Rules requires that the general rules (including definitions), regulations, exceptions, and conditions that govern the tariff must be stated clearly and definitely.

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[1] Transmittal No. 2316, SWB Tariff F.C.C. No. 73, Proposed Section 7.2.22; *see also id.*, Description and Justification (D&J) at 1. MegaLink Data special access services is the name under which SWB tariffs its digital data service offerings.

[2] *Id.*

[3] D&J at 2; *see also* SWB Reply at 1.

[4] D&J at 1 (*citing*, Teleport Communications Group Operating Companies, Tariff F.C.C. No. 1, Transmittal No. 1, 8 FCC Rcd 3611 (Com. Car. Bur. 1993), *application for review pending.*,

[5] D&J at 2.

[6] *Id.*

[7] Sprint Petition at 1-3; WilTel Petition at 2; *see also* MCI Petition at 2, 6-7. *See* Tariff Filing Requirements for Nondominant Common Carriers, 8 FCC Rcd 6752 (1993) (*Rate Range Order)* (the Commission amended the tariff content requirements to allow domestic nondominant carriers to state in their tariffs a reasonable range of rates), *appeal pending sub nom.* Southwestern Bell v. FCC, Case No. 93-1562 (D.C. Cir., filed on Jan.5 , 1994); *see also* Sections 61.22(b) and 61.22(d) of the Commission's Rules, 47 C.F.R. §§ 61.22(b) and 61.22(d) (Domestic nondominant carriers: (1) may express rates in their tariff "in a manner of the carrier's choosing and may include a reasonable range of rates[, ... and (2)] are not subject to the tariff filing requirements of Section 61.54[.]"). Section 61.3(t) of the Commission's Rules, 47 C.F.R. § 61.3(t), defines a nondominant carrier as "[a] carrier that has not been found to be dominant." The Commission has found SWB to be a dominant carrier. Therefore, SWB is not eligible to file rate ranges under the *Rate Range Order.*

[8] WilTel Petition at 2 and MCI Petition at 3-5. *See* Local Exchange Carriers Individual Case Basis DS3 Service Offerings, 4 FCC Rcd 8634, 8642 (1989) ("[O]nce exchange carriers have sufficient experience with a service . . . to permit the development of averaged rates, they must file such rates."), *on recon.*, 5 FCC Rcd 4842 (1990) (*ICB Orders).*

[9] WilTel Petition at 1; Sprint Petition at 2, MCI Petition at 3.

[10] SWB Reply at 3-4.

[11] *Id.* at 4-5.

[12] *Id.* at 6.

7. The language in Transmittal 2316 violates both of these rule sections. In Transmittal 2316, SWB proposes to charge rates for MegaLink Data special access services that will vary depending upon the customer and surrounding circumstances, but SWB fails to identify explicitly how SWB will exercise its discretion in developing a rate for a prospective customer. It is therefore impossible to discern from the face of Transmittal 2316 the rate that SWB would charge a customer for MegaLink Data special access services. Accordingly, we find Transmittal 2316 to be vague and ambiguous in violation of Sections 61.2 and 61.54(j) of the Rules. Section 61.1 of the Commission's Rules, 47 C.F.R. § 61.1, states that failure to comply with any provision of Part 61 may be grounds for rejection of the noncomplying provision. Because the rate SWB would charge a customer for MegaLink Data special access service is unclear, we reject Transmittal 2316 as violative of Part 61 of the Commission's Rules.

8. Moreover, although SWB argues that it should be allowed the same tariffing flexibility as TCG, SWB cites no Commission precedent to support this claim. Because they lack market power, nondominant carriers such as TCG are subject to streamlined tariff regulation -- their tariffs are presumptively lawful, and may be filed on one day's notice without cost support information.[13] TCG's tariff was permitted to take effect pursuant to these requirements. SWB, however, is a dominant carrier whose tariffs are subject to a higher level of scrutiny. The Commission has not permitted SWB the same pricing flexibility that it permits nondominant carriers like TCG.

9. We also find that SWB's constitutional claim does not support its asserted entitlement to the tariffing flexibility granted to nondominant carriers. The Commission previously found that the dominant/nondominant regulatory classification does not violate any constitutional equal protection guarantee.[14] For the reasons explained above, Transmittal 2316 violates Sections 61.2 and 61.54(j), is patently unlawful and, therefore, is rejected.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 61.1 of the Commission's Rules, 47 C.F.R. § 61.1, the tariff revisions regarding maximum and minimum rates filed by Southwestern Bell Telephone Company in Tariff F.C.C. No. 73, Transmittal No. 2316, ARE REJECTED.

11. IT IS FURTHER ORDERED that Southwestern Bell Telephone Company SHALL FILE tariff revisions to become effective on one day's notice, no later than five business days from the release of this Order, to remove the rejected materials and reinstate the currently effective material.

12. IT IS FURTHER ORDERED that, for these purposes, we waive Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58 and 61.59. Southwestern Bell Telephone Company should cite the "DA" number of the instant Order as the authority for this filing.

13. IT IS FURTHER ORDERED that the petitions to reject Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Transmittal No. 2316, filed by Sprint Communications Company L.P., MCI Telecommunications Corporation, and WilTel, Inc., ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

A. Richard Metzger, Jr.
Acting Chief, Common Carrier Bureau

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[13] *Rate Range Order,* 8 FCC Rcd at 6756. The lawfulness of nondominant carriers' tariffs, however, may be challenged through complaints filed under Secton 208 of the Communications Act.

[14] *Id.* at 6754, n.21.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 13, 1994

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON US WEST'S AMENDMENTS TO ITS ONA PLAN

CC Docket No. 88-2, Phase I

On March 22, 1994, US West, Inc. (US West) filed Amendments to its Open Network Architecture (ONA) plan. In one filing, US West proposes to amend its ONA plan to add two new Basic Service Elements (BSEs) . US West also seeks a waiver of the 90-day waiting period in order to offer these two BSEs immediately. In the other filing, US West proposes to add two new Complementary Network Services (CNSs).

US West states that one of the BSEs -- the Message Desk SMDI-Expanded (MDSI) -- is an upgrade of Message Delivery Service (MDS), an existing BSE identified in its April 15, 1992 ONA filings. US West states that MDSI is similar to MDS except that MDSI uses the Signalling System 7 network to pass calling and called information between central offices.

US West also plans to add Single Number Service (SNS) as a BSE. US West states that SNS provides a single telephone number to customers with multiple business locations. US West states that with SNS calls are normally routed to the closest business location of the calling party and the routing functionality may be done either by NXX or zip code.

US West urges the Commission to act on its ONA plan Amendments expeditiously, and that the Commission waive the 90-day waiting period for US West to use MDSI and SNS in conjunction with one or more enhanced services. US West states that a review of the Commission's ONA orders demonstrates that the purpose of the 90-day waiting period is to provide notice to the industry of the new ONA service. US West further states that no regulatory or market benefit would be realized by requiring US West to wait an additional 90 days before utilizing either of these ONA services in conjunction with its own enhanced services.

In its other filing, US West describes two new CNSs that it intends to offer. US West states that Voice Dialing service allows a subscriber to originate calls by picking up a telephone receiver and speaking a pre-recorded name or word(s), instead of dialing digits. US West states that Voice Dialing service is activated on a "line basis," and subscribers may set-up their service by dialing an access code. US West describes the other CNS as the FindMe Service which is a terminating network service that uses a personal number associated with the subscriber that works within a local geographic area rather than with a specific line. US West does not plan to use the new CNSs in connection with its own enhanced services operation until the Commission approves the Amendments for these services.

Interested parties may file comments on these Amendments by **May 3, 1994**, and reply comments by **May 18, 1994**, with the Secretary, FCC 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the Amendments can be obtained from ITS, Inc. at (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally*, 47 C.F.R. 1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-1300.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications — Contract Tariff Transmittal No. 1590

Contract Tariff F.C.C. No. 1081

ORDER

Adopted: April 12, 1994; Released: April 12, 1994

By the Chief, Tariff Division, Common Carrier Bureau:

1. On March 30, 1994, AT&T Communications (AT&T) filed the captioned tariff on 14 days' notice pursuant to the Commission's *IXC Order*.[1] That Order establishes streamlined tariff review for filings that are presumed lawful. Contract Tariff Transmittal No. 1590 introduces Contract Tariff No. 1081 for AT&T 800 Services. The tariff, as amended, is currently scheduled to take effect April 13, 1994.[2]

2. On April 5, 1984, 800 Discounts, Inc. (800 Discounts) filed a petition to reject or suspend Transmittal 1590. AT&T filed a reply on April 8, 1994.

3. The Common Carrier Bureau has reviewed AT&T Communications Contract Tariff 1081, Contract Tariff Transmittal 1590 and the related pleadings. We conclude that the filing does not warrant rejection because it does not, on its face, conflict with a statute or with an agency regulation or order. We further conclude that the petition does not demonstrate that an investigation is warranted at this time.

4. Accordingly, IT IS ORDERED that the petition to reject or suspend and investigate AT&T Communications Contract Tariff F.C.C. No. 1081, Transmittal No. 1590, filed by 800 Discounts, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

[1] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, *reconsidered in part*, Memorandum Opinion and Order, 6 FCC Rcd 7569 (1991), *further recon.*, Memorandum Opinion and Order, 7 FCC Rcd 2677 (1992).

[2] On April 11, 1994, AT&T filed Contract Tariff Application Number 290 to clarify that New Business Usage under the contract tariff includes the conversion or addition of 800 numbers that are new to AT&T.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Computer III Remand Proceeding: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards — **CC Docket No. 90-623**

Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation — **CC Docket No. 92-256**

ORDER

Adopted: April 13, 1994; Released: April 14, 1994

By the Chief, Policy and Program Planning Division, Common Carrier Bureau:

1. On March 10, 1994, the Commission released a public notice seeking additional comment on rules governing telephone companies' use of customer proprietary network information (CPNI).[1] The notice sought comment on the CPNI privacy expectations of residential and small business customers. The notice also sought comment on whether the Commission's rules, which currently apply only to the Bell Operating Companies (BOCs) and GTE Corporation (GTE), should apply to other local exchange carriers. Finally, the Commission asked that parties recommending a change in the CPNI rules discuss whether their proposed rules should apply to the provision of customer premises equipment (CPE).

2. The notice required parties to file comments by **April 11, 1994**, and reply comments by **May 2, 1994**. In this order, on our own motion, we extend the filing deadlines for parties to respond to the public notice. Interested parties are to file comments by **May 5, 1994**[2] and reply comments by **May 19, 1994** with the Secretary, FCC, 1919 M Street N.W., Washington, D.C. 20554. A copy should also be sent to Rose M. Crellin, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W. Washington, D.C. 20554, and to the Commissions's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting
Chief, Policy and Program Planning
Division, Common Carrier Bureau

[1] Public Notice, CC Dockets No. 90-623 and 92-256, FCC 94-63, released March 10, 1994.

[2] Comments received in response to the April 11, 1994 comment date in the notice will be considered as filed in this proceeding. Parties do not have to refile those comments.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

ELLIS THOMPSON CORPORATION — File No. 14261-CL-P-134-A-86

For facilities in the Domestic Public Cellular Radio Telecommunications Service on Frequency Block A in Market No. 134, Atlantic City, New Jersey

ORDER

Adopted: April 19, 1994; Released: April 20, 1994

1. The United States Court of Appeals for the District of Columbia Circuit has issued a decision remanding this matter to the Commission for further proceedings. *Telephone and Data Systems, Inc. v. FCC*, No. 92-1273 (D.C. Cir. March 25, 1994).

2. In order to allow expeditious consideration of this matter, the parties will now be permitted to submit views as to what further action should be taken with respect to this matter. The parties should be aware that this case and a companion case, *Telephone and Data Systems, Inc. v. FCC*, No. 92-1291 (D.C. Cir. March 29, 1994), raise related questions regarding the relevance and application of criteria in *Intermountain Microwave*, 24 RR 983 (1963), to issues of control in the cellular radio service. Those filing comments should familiarize themselves with the two cases and should be cognizant of the need to apply *Intermountain* in a consistent manner in the two proceedings. Comments should not exceed 10 pages and should be submitted 15 days from the release date of this Order. Reply comments, if any, not to exceed 5 pages, may be filed within 7 days after comments are due.

3. ACCORDINGLY, IT IS ORDERED, pursuant to the authority delegated under 47 C.F.R. § 0.251(f)(8), that the parties ARE REQUESTED to file comments in accordance with paragraph 2, above and to serve a courtesy copy of any pleading upon the Adjudication Division, Office of General Counsel, Room 610, Mail Stop 1400 C, 1919 M Street, N. W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

William E. Kennard
General Counsel

By John I. Riffer
Associate General Counsel

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Clifford R. Bartlet, dba Alpha Computers, Manhattan, Kansas — NAL/Acct. No. 215KC0014

ORDER

Adopted: April 14, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Clifford R. Bartlett, owner of Alpha Computers, (Petitioner) filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $10,000 issued for violation of Section 302(b) of the Communications Act of 1934, as amended, 47 U.S.C. §302(b), and Section 2.803 of the Commission's Rules, 47 C.F.R. §2.803. For the reasons noted below, the Bureau reduces the monetary forfeiture amount to $1,000.

II. BACKGROUND

2. On September 16, 1992, the Commission's Kansas City Office issued a Notice of Apparent Liability (NAL) to Petitioner. The penalty was imposed for marketing of personal computers for which no equipment authorization had been granted by the Commission. Based on the response from Petitioner, the Kansas City office issued a Notice of Forfeiture (NOF) for $10,000 on October 19, 1992. Petitioner now appeals. The petitioner contends he did not know the computers in question were not authorized by the Commission. Petitioner also submits tax returns in support of his contention that he is unable to pay the $10,000 monetary forfeiture.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in pages 1-3 of the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Review of these arguments raised in the petition, as well as review of the NAL and NOF, reveals that Petitioner apparently does not understand the purpose of the Commission's equipment authorization rules and the procedures for complying with them. Personal computers are radio frequency devices that, if not properly constructed with shielding of the components and filtering of connecting lines, can cause extensive interference to radio communication circuits. Therefore, the Commission requires testing of units prior to marketing to confirm that they will not radiate radio frequency energy and cause interference. When a particular model of computer is tested and confirmed to have been properly constructed so as to not radiate prohibited interference, it is granted an equipment authorization. This authorization allows the marketing of identical units of this authorized equipment without further testing. Once a particular model of equipment has been granted an equipment authorization (certified), the manufacturer is prohibited from making any changes other than those itemized in Sections 2.932 and 2.1042 of the Commission's Rules. Any changes in the electrical circuits or the physical construction of a personal computer (such as changing the case style from desktop to tower) voids the equipment authorization.

4. Petitioner should also be aware that a Commission equipment authorization is not transferrable. A company holding an equipment authorization may authorize another company to manufacture the equipment under its equipment authorization but only if such production is electrically and mechanically identical to the specifications that were submitted to the Commission with the application for equipment authorization. Furthermore, an equipment authorization symbol (FCC ID or "sticker" as the petitioner refers to the ID) can be affixed only to equipment that is electrically and mechanically identical to the specifications that were submitted with the application for that particular FCC ID. Merely applying a label with an FCC ID symbol to a piece of equipment that differs from the specifications submitted with the application for that particular FCC ID does not convey an equipment authorization to that equipment. See Sections 2.926 through 2.931 of the Commission's Rules.

5. However, the petitioner claims that he cannot pay the forfeiture and submitted financial information in support of this contention. The financial information provided shows that, although the peititoner cannot afford the $10,000 monetary forfeiture, the petitioner can pay a smaller forfeiture amount. Thus, we reduce the forfeiture amount for this reason.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. §503(b), and Section 1.106 of the Rules, 47 C.F.R. §1.106, the petition for reconsideration is GRANTED in part and DENIED in all other respects.

7. IT IS FURTHER ORDERED that Clifford R. Bartlett, dba Alpha Computers, must pay the forfeiture amount of one thousand dollars ($1,000) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 215KC0014 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Chicago, Illinois 60673-7482

8. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Petitioner.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

John J. Emil NAL/Acct. No. 315DT0010
New Baltimore, Michigan

ORDER

Adopted: April 14, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. John J. Emil filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $8,000 issued for violation of Section 325(a) of the Communications Act of 1934, as amended, (the Act) 47 U.S.C. §325(a). For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On May 26, 1993, the Detroit Office issued a Notice of Apparent Liability (NAL) to John J. Emil. The penalty was imposed for transmitting a false distress call on May 6, 1993. Based on the response from John J. Emil, the Detroit Office issued a Notice of Forfeiture (NOF) for $8.000 on October 1, 1993. John J. Emil now appeals. The petitioner contends that the distress signal must have originated from some other vessel in the same area. He asserts that the equipment that the US Coast Guard employed to locate the distress signal is unreliable and, in this case, incorrect in identifying his vessel as the point of origin. Mr. Emil expressed willingness to take a lie detector test to prove his innocence.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that John J. Emil must pay the forfeiture amount of Eight Thousand Dollars ($8,000) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315DT0010 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to John J. Emil.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CTC NAL/Acct. No. 315LA0042
Fremont, California

ORDER

Adopted: April 14, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. CTC filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $700 issued for violation of Section 302(b), 47 U.S.C. § 302(b), of the Communications Act of 1934, as amended, (the Act), and Section 2.925 of the Commission's Rules, 47 C.F.R. § 2.925. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On December 7, 1992 , the Los Angeles Office issued a Notice of Apparent Liability (NAL) to CTC for $7,000. The penalty was imposed for marketing uncertified personal computers as the computers on display were not labelled with valid FCC Id numbers. Based on the response from CTC which showed that the computers were certified, but not labelled, the Los Angeles Office issued a Notice of Forfeiture (NOF) for $700 on January 6, 1993. CTC now appeals.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that CTC must pay the forfeiture amount of SEVEN HUNDRED dollars ($700) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315LA0042 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to CTC.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Steve Mahaffey NAL/Acct. No. 315FE0084
Bellingham, Washington

ORDER

Adopted:April 14, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Steve Mahaffey (Petitioner) filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $100 issued for violation of Section 301 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 301. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On September 13, 1993, the Commission's Ferndale, Washington Office issued a Notice of Apparent Liability (NAL) to Steve Mahaffey. The penalty was imposed for operating an unlicensed marine radio station on Marine Channel 28 (157.400 MHz). Petitioner's license to operate the station aboard the vessel PRELUDE, WRT5128, expired on July 1, 1987. Based on the response from Petitioner, the Ferndale Office issued a Notice of Forfeiture (NOF) for $100 on October 14, 1993. Petitioner now appeals. The Petitioner contends that the forfeiture should be cancelled because it is minor, and resulted from the mistaken belief that the license he had previously obtained was a life-time license, and that he did not operate the radio station except in accordance with the Rules (i.e. to monitor Channel 16, the emergency channel). Petitioner also argues that his actions were not willful.

III. DISCUSSION AND CONCLUSIONS

3. The arguments raised in Petitioner's letter, which is hereby considered as a Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of the arguments raised in the Petition as well as review of the NAL and NOF, we find that the Petitioner fails to present any new arguments or evidence that was not previously addressed.

4. The NAL and NOF indicate that amount of the forfeiture was reduced from the base forfeiture amount of $8,000 to $100 on all documented mitigating factors, including the factors listed by Petitioner as a basis for mitigation.

IV. ORDERING CLAUSES

5. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. §503(b), and Section 1.106 of the Rules, 47 C.F.R. §1.106, the petition for reconsideration is DENIED.

6. IT IS ORDERED THAT Steve Mahaffey must pay the forfeiture amount of one hundred dollars ($100)) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315FE0084 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

7. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Steve Mahaffey.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Giant Electronics NAL/Acct. No. 315LA0103
Hawaiian Gardens, California

ORDER

Adopted: April 14, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Giant Electronics (Petitioner) filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $7,000 issued for violation of Section 302(b) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 302(b) and Section 2.803 of the Commission's Rules, 47 C.F.R. § 2.803. For the reasons noted below, the Bureau reduces the monetary forfeiture amount to $5,600.

II. BACKGROUND

2. On July 15, 1993 , the Commission's Los Angeles Office issued a Notice of Apparent Liability (NAL) to Giant Electronics. The penalty was imposed because on June 2, 1993, Giant Electronics displayed and offered for sale an unauthorized Class B device (a 40 MHz personal computer, model name and number "Eternal 486DX") in its retail store located at 12125 E. Carson Street, Hawaiian Gardens, CA. Based on the response from Giant Electronics, the Los Angeles Office issued a Notice of Forfeiture (NOF) for $7,000 on September 20, 1993. Petitioner now appeals. The Petitioner contends that the forfeiture should be reduced or cancelled because it is unable to pay the amount of the forfeiture and maintain its business. Petitioner also contends that the violation was unintentional and minor, and that at most the company should have been issued a Cease and Desist order.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in Petitioner's letter, which is here accepted as a Petition for Reconsideration, have been thoroughly considered and are incorporated herein by reference. Review of these arguments raised in the Petition, as well as review of the NAL and NOF, reveals that Giant Electronics fails to raise any new issues or arguments that warrant mitigation or cancellation. However, we note that Giant Electronics has no record of any previous violation of Commission rules. Thus, the forfeiture amount will be reduced accordingly.

4. We also note Petitioner's claims that it cannot pay the forfeiture and that it has submitted financial information in support of this contention. The financial statements, however, are unaudited financial statements which were not done according to generally accepted accounting principles. According to the statement included by the certified financial accountant, "... management has elected to omit substantially all of the disclosures required by generally accepted accounting principles." The financial documents submitted, therefore, are insufficient and cannot be used to support Petitioner's claims of inability to pay.

IV. ORDERING CLAUSES

5. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. §503(b), and Section 1.106 of the Rules, 47 C.F.R. §1.106, the petition for reconsideration is GRANTED in part and DENIED in all other respects.

6. IT IS FURTHER ORDERED that Giant Electronics must pay the forfeiture amount of five thousand six-hundred dollars ($5,600) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315LA0103 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

7. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Giant Electronics and counsel.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Valencia Airport Shuttles, Inc.
Valencia, California

NAL/Acct. No. 315LA0095

ORDER

Adopted: April 14, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. On October 28, 1993, the Commission received a photocopy of a letter dated September 1, 1993, from Valencia Airport Shuttles, Inc. (Valencia) addressed to the supervisor of the Commission's Los Angeles Office. Although not specifically identified as such, it is being treated as a Petition for Reconsideration filed pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106. It requests cancellation of the monetary forfeiture of $750 issued for violation of Section 90.427(a) of the Commission's Rules, 47 C.F.R. § 90.427(a). For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On August 5, 1993, the Commission's Los Angeles Office issued a Notice of Apparent Liability (NAL) to Valencia. The penalty was imposed for causing interference to other mobile relay (repeater) stations in the area that share Valencia's operating frequencies by failing to maintain control of one of its mobile relay stations. Based on the response from Valencia, the Los Angeles Office issued a Notice of Forfeiture (NOF) for $750 on September 23, 1993. Valencia now appeals. The petitioner contends that use of the mobile relay station in question had been discontinued two years ago and, therefore, the forfeiture should be cancelled.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in Valencia's letter have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the letter as well as review of the NAL and NOF, we find that Valencia fails to present any new arguments or evidence that was not previously addressed. Accordingly, the forfeiture amount is affirmed.

4. We note that Valencia indicates in its letter that it had discontinued use of the mobile relay station that was creating the interference two years ago. However, a check of Commission licensing records indicates that it failed to have its license modified to reflect this change and the technical evidence indicates that the transmitter remained in operation even though, as Valencia indicates, it was not being used. This violates Section 90.135(a)(5) of the Commission's Rules.

IV. ORDERING CLAUSES

5. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is DENIED.

6. IT IS FURTHER ORDERED that Valencia Airport Shuttles, Inc. must pay the forfeiture amount of seven hundred fifty dollars ($750) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315LA0095 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

7. IT IS FURTHER ORDERED that Valencia Airport Shuttles, Inc. BE PUT ON NOTICE that change in the use of its base stations, or change in its area of mobile operations mandates an application for modification of its station license. Failure to comply with this requirement may be in violation of Section 90.135 of the Commissions Rules and could result in assessment of a monetary forfeiture.

8. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Valencia and its service representative.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Vessel Assist Association of America, Inc. Costa Mesa, California — NAL/Acct. No. 315LA0113

ORDER

Adopted: April 14, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. David La Montagne, President, Vessel Assist Association of America, Inc. (Petitioner) filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $8,000 issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, (the Act), 47 U.S.C. § 503(b), for violation of Section 80.312 of the Commission's Rules, 47 C.F.R. § 80.312. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On August 5, 1993, the Commission's Los Angeles Office issued a Notice of Apparent Liability (NAL) to Petitioner. The penalty was imposed for interrupting communications between the U. S. Coast Guard and the vessel WAYOUT while the vessel was requesting assistance from the Coast Guard. Based on the response from Petitioner, the Los Angeles Office issued a Notice of Forfeiture (NOF) for $8,000 on September 17, 1993. Petitioner now appeals. Petitioner contends that it did not willfully cause interference, and that it was only trying to contact the distressed vessel so that it could provide the needed assistance.

III. DISCUSSION AND CONCLUSION

3. The arguments raised at Paragraphs 12 through 21 of the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition, as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed. With the exception of the matters discussed below, its concerns in the above mentioned paragraphs have been adequately considered in the NOF.

4. Although previously explained, Petitioner continues to insist that its actions and the resulting violation were not willful. Section 312(f)(1) of the Communications Act of 1934, as amended, which also applies to Section 503(b), provides that the term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.[1] We note that Petitioner, by its own admission, states that it called the distressed vessel WAYOUT on marine channel 22A (157.1 MHz), and directed it to shift to another communications channel. Thus, Petitioner did interrupt communications between the vessel and the Coast Guard.

IV. ORDERING CLAUSES

5. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. §503(b), and Section 1.106 of the Rules, 47 C.F.R. §1.106, the petition for reconsideration is DENIED.

6. IT IS FURTHER ORDERED that Vessel Assist Association of America, Inc. must pay the forfeiture amount of eight thousand dollars ($8,000) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[2] Please place NAL/Acct. No. 315LA0113 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

7. IT IS FURTHER ORDERED that Vessel Assist Association of America, Inc. BE PUT ON NOTICE that any future improper use of marine channel 22A (157.1 MHz) without obtaining *prior authorization from the United States Coast Guard* will be considered a violation of Section 80.373(f) of the Commission's Rules, 47 U.S.C. § 80.373(f), and will result in imposition of a monetary forfeiture.

8. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Petitioner.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

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[1] *See Southern California Broadcasting*, 6 FCC Rcd 4387 (1991).

[2] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

William C. McCray, Jr. NAL/Acct. 315SF0007
East Palo Alto, California

Liability for Forfeiture

ORDER

Adopted: April 14, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. The Commission has before it a letter submitted by William C. McCray, Jr., (Petitioner), requesting reconsideration of a $2,000 monetary forfeiture issued by the Commission's San Francisco Office to Petitioner for violating Section 301 of the Communications Act of 1934, as amended, (the Act), and Section 95.411 (CB Rule 11) of the Commission's Rules, by operating a CB station connected to an external radio frequency power amplifier (i.e. power amplifier). After review of the facts associated with this matter, we are reducing the forfeiture.

2. The appropriate amount of this forfeiture is $1,600.

II. BACKGROUND

3. On October, 14, 1992, Petitioner operated a CB radio station on the frequency 27.085 MHz with a 600 Plus linear amplifier connected in the transmission line between the Dynascan Cobra 132A transmitter and the station antenna. Petitioner's station did not have a license or other authorization from the Commission for the use of this linear amplifier.[1]

4. On October 23, 1992, the Commission's San Francisco Office issued a Notice of Apparent Liability for Monetary Forfeiture (NAL) to Petitioner proposing a $2,000 penalty. Petitioner responded by letter dated November 3. 1992.

5. After review of Petitioner's response, the San Francisco Office issued a $2,000 Notice of Forfeiture (NOF) to Petitioner on December 23, 1992.

III. DISCUSSION

6. Petitioner responded to the NOF by an undated letter postmarked January 8, 1993. Petitioner admits that he used a linear amplifier with his CB radio but claims that he was unaware that doing so violated regulations. The Commission expects its licensees (including CB users authorized by CB Rule 4, 47 C.F.R. § 95.404, to operate without an individual station authorization) to be familiar with those rules that govern the class of station they operate.[2] Claims of unfamiliarity with rules cannot be used to justify mitigation of penalties. Thus, the violation was willful under the Act.[3]

7. Petitioner asserts that he is unable to pay the forfeiture but provides no documentary evidence to support his claim.[4] Therefore, we are unable to consider this factor in setting the appropriate forfeiture amount.

8. Petitioner has provided no other facts or information that were not previously considered in setting the initial forfeiture amount. We note, however, that Petitioner has no history of prior violations. For that reason, we are making a downward adjustment of the forfeiture amount.

IV. CONCLUSION AND ORDERING CLAUSES

9. Petitioner has violated Section 301 of the Communications Act, 47 U.S.C. § 301, by operating a CB radio station that failed to comply with the provisions of Section 95.404 of the Commission's Rules (that allows operation of CB stations without an individual station license) by operating his station in conjunction with an illegal power amplifier prohibited by Section 95.411 of the Commission's Rules. The appropriate penalty for this violation is a monetary forfeiture. In setting the amount of the penalty, the factors specified in the Act and the Commission's *Policy Statement* were considered.[5]

10. Pursuant to Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and Section 1.80(f) of the Commission's Rules, 47 C.F.R. § 1.80(f), IT IS ORDERED that William C. McCray FORFEIT to the United States the sum of one thousand six hundred dollars ($1,600) for the willful violation of Section 301 of the Communications Act.

11. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80(h) of the Commission's Rules, 47 C.F.R. § 1.80(h), that the forfeiture must be paid within thirty (30) days of the date

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[1] Section 95.404 of the Comission's Rules, (CB Rule 4) authorizes individuals to operate a CB station without an individual station license, provided that the station complies with the rules in Subpart 95 (including CB Rule 11). *See* 47 C.F.R. §§ 95.404, 95.411.

[2] *See Triad Broadcasting Company, Inc.*, 96 FCC 2d 1235, 1242 (1984).

[3] Section 312(f)(1), which also applies to Section 503(b), provides: The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

[4] Petitioner was advised in the NAL that if he wished to claim inability to pay the forfeiture he should document his claim by providing copies of his federal income tax returns for the most recent three years.

[5] The base forfeiture amount for operating a station in services other than broadcast and common carrier without an instrument of authroization is $8,000. Because Petitioner is an individual and because he has no history of prior violations, the initial forfeiture amount was adjusted downward to $2,000. *See Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993). *See also* 47 C.F.R. § 503(b)(2)(D).

of release of this order.[6] Payment should be made by check or money order payable to the Federal Communications Commission, Attn: NAL/Acct. 315SF0007 and must be mailed to:

Federal Communications Commission
P.O. Box 73482
Chicago, IL 60673-7482

12. IT IS FURTHER ORDERED that the Field Operations Bureau send by certified mail, return receipt requested, one copy of this Order to Petitioner.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[6] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Information Power Systems Corporation
Santa Fe Springs, California

NAL/Acct. No. 215CG0013

ORDER

Adopted: April 14, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Information Power Systems Corporation filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $7,000 issued for violation of 302(b), 47 U.S.C. §302(b), of the Communications Act of 1934, as amended, (the Act), and Section 2.803 of the Commission's Rules, 47 C.F.R. §2.803. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On May 20, 1992 , the Chicago Office issued a Notice of Apparent Liability (NAL) to Information Power Systems Corporation. The penalty was imposed for exhibiting an uncertified Class B digital device without displaying the notice required by Commission Rule 2.803 indicating that the Class B digital device was not for sale. Based on the response from Information Power Systems Corporation, the Chicago Office issued a Notice of Forfeiture (NOF) for $5,600 on July 22, 1992. Information Power Systems Corporation now appeals. The petitioner contends that it had no intention of violating the Commission's rules, that it did have a sign displayed marked "for components sales only" and that it has not sold any uncertified devices.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in paragraphs two and three of the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of the arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed. As noted above, the display sign did not contain the language required under Section 2.803 of the Rules. The fact that the company had not previously violated Commission rules was considered and justified a reduction from $7000 to $5,600.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that Information Power Systems Corporation must pay the forfeiture amount of five thousand six hundred dollars ($5,600) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 215CG0013 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Information Power Systems Corporation.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Megabytes Computer Centre
Jacksonville, Florida

NAL/Acct. No. 315TP0007

ORDER

Adopted: April 15, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Mr. John M. Widdows III, President of Megabytes Computer Centre, (Petitioner), filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $3,500 issued for violation of Section 302(b), 47 U.S.C. §302(b), of the Communications Act of 1934, as amended, (the Act), and Section 2.803 of the Commission's Rules, 47 C.F.R § 2.803. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On June 11, 1993, the Commission's Tampa, Florida, office issued a $7,000 Notice of Apparent Liability (NAL) to Petitioner. The penalty was imposed for marketing personal computers that had not been granted an equipment authorization by the Commission. Based on the response from Petitioner, the Tampa Office issued a Notice of Forfeiture (NOF) for $3,500 on September 9, 1993. Petitioner now appeals. Petitioner contends that it should have received a warning rather than a forfeiture, that its vendor assured it that the devices were properly certified, that the employee did not understand what the FCC inspector was asking, and that the amount of the penalty is unacceptably high.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in Petitioner's letter have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed. The forfeiture amount for this violation is in accord with the Communications Act and Commission policy. Because there was no history of prior violations of this type by Petitioner, the forfeiture amount was adjusted downward. Although Petitioner claims inability to pay the forfeiture, no documentation, such as tax returns or financial statements, that were requested in the Notice of Apparent Liability, were submitted to support this claim. Accordingly, the forfeiture amount is affirmed.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that Megabytes Computer Centre must pay the forfeiture amount of three thousand five hundred dollars ($3,500) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315TP0007 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Petitioner.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Rachet Jaw NAL/Acct. No. 315LA0134
CB Sales
Orange, California

ORDER

Adopted: April 15, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Rachet Jaw CB Sales filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $4,480 issued for violation of Section 302(b) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 302(b), and Section 2.815(b) of the Commission's Rules, 47 C.F.R. § 2.815(b). For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On September 17, 1993, the Commission's Los Angeles Office issued a $14,000 Notice of Apparent Liability (NAL) to Rachet Jaw CB Sales. The penalty was imposed for its marketing of unauthorized radio devices (i.e. a Silver Streak 150 CB radio frequency (RF) power amplifier and a Messenger 300 CB RF power amplifier). Based on the response from Rachet Jaw CB Sales, the Los Angeles Office issued a Notice of Forfeiture (NOF) for $4,480 on October 22, 1993. Petitioner now appeals. The Petitioner contends that the forfeiture should be reduced further because it did not sell or offer to sell any amplifiers to the FCC investigator.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in Petitioner's letter, which is here considered as a Petition for Reconsideration, have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the Petitioner fails to present any new arguments or evidence that was not previously addressed.

4. However, we note that the petitioner claims that it cannot pay the forfeiture and asks that we review financial information submitted in support of this contention. The financial information, however, does not support any further reductions.

IV. ORDERING CLAUSES

5. IT IS ORDERED, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, that the petition for reconsideration is DENIED.

6. IT IS FURTHER ORDERED that Rachet Jaws CB Sales must pay the forfeiture amount of four thousand four-hundred eighty dollars ($4,480) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315LA0134 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

7. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Rachet Jaws CB Sales.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Dan J. McLean NAL/Acct. No.: 315AN0023
Kasilof, Alaska

Liability for Monetary Forfeiture

ORDER

Adopted: April 15, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. The Bureau has before it a Petition for Reconsideration filed by C. Michael Hough, counsel for Dan J. McLean (Petitioner) pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, requesting reconsideration of the Anchorage Office's action finding Petitioner liable for a monetary forfeiture in the amount of $2,000 for violating Section 301 of the Communications Act of 1934, as amended (the Act), 47 U.S.C.§ 301, by operating the radio station aboard his vessel, DIANA C, WRB9082, Official Number 600073, on a frequency for which no authorization had been issued by the Commission. As explained below, we are sustaining the monetary forfeiture penalty.

2. The appropriate amount for this forfeiture is $2,000.

II. BACKGROUND

3. On July 20, 1992, at 9:50 AM and 3:21 PM, ADT and on July 23, 1992, at 8:20 AM and 1:42 PM, ADT, a radio station on board the vessel DIANA C, WRB9082, was operated on the frequency 6210.0 kHz. Dan J. McLean, the registered owner of the vessel and licensee of the ship radio station on board, had no authorization issued by the Commission for this operation.

4. On August 3, 1992, at 1:21 PM, ADT, a radio station on board the vessel DIANA C, WRB9082, was operated on the frequency 3000.0 kHz. Again Dan J. McLean, the registered owner of the vessel and licensee of the ship radio station on board, had no authorization issued by the Commission for operation on that frequency.

5. On January 15, 1993, the Commission's Anchorage Office issued a Notice of Apparent Liability (NAL) to Dan J. McLean which proposed a monetary forfeiture in the amount of $2,000. The NAL was sent by certified mail, return receipt requested. The NAL had previously been mailed to Petitioner's address of record, 5040 E. 24th Ave., Anchorage, AK 99508 on October 27, 1992. It was returned by the Postal Service on November 16, 1992, marked "Unclaimed." On November 17, 1992, it was remailed to the same address by regular mail. It was returned by the Postal Service marked "Not deliverable as addressed. Unable to forward. Return to sender." On December 15, 1992, it was remailed to the address Petitioner furnished when he applied for a fishing permit, 5026 24th Ave, Anchorage, AK 99508. The certified letter was returned on December 18, 1992 by the Postal Service marked: "Return to sender. Insufficient address." Further search in the Alaska Fish and Game records produced an address of POB 493, Kasilof, Alaska 99610. The NAL was remailed to that address on January 15, 1993, by certified mail, return receipt requested. It was returned by the Postal Service on February 16, 1993, marked "Unclaimed". On February 17, 1993, the NAL was resent by regular mail. That copy was not returned.

6. No response to the NAL was received. On March 22, 1993, a Notice of Monetary Forfeiture (NOF) in the amount of $2,000 was issued to Dan J. McLean. Since the Kasilof address was the only one from which mail was not returned, the forfeiture notice was sent to that address by certified mail, return receipt requested. It was not returned. The return receipt was signed by an agent, Mary J. Lambe.

III. DISCUSSION

7. Petitioner complains that he was not properly notified of the issuance of the NAL. Section 1.47 of the Commission's Rules contains the requirements for service of official documents. Mailing the documents to the address furnished in Petitioner's most recent application filed with the Commission complies with this rule.

8. Section 1.5 of the Commission's Rules specifies that the mailing address furnished by a licensee on his most recent application will be used by the Commission for delivery of official correspondence unless the licensee notifies the Commission to the contrary. 47 C.F.R. § 1.5(a). Section 1.5(b) specifies that licensees are responsible for making whatever arrangements may be necessary to ensure that official correspondence sent to their address of record will reach them promptly or will be received by someone authorized to act in their behalf. 47 C.F.R. § 1.5(b). The Commission has no record of having received a change of address notification from Dan J. McLean, the licensee of WRB9082 aboard the vessel DIANA C.

9. Petitioner also contends that the case should be remanded to the local FCC office to resolve. Both the NAL and NOF outline the procedure for contesting a forfeiture. Once the NOF is issued, petitioner must seek reconsideration at the Bureau level and not the field level. Personnel at the field office as well as Field Operations Bureau in Washington, D.C. explained the procedures to Petitioner's counsel and granted extensions to counsel to put forth all possible evidence in this matter. Thus, Petitioner was accorded notice and opportunity to be heard throughout the process.

10. Petitioner claims that the violation, if it occurred, was not willful. Section 312(f)(1) of the Act, which also applies to Section 503(b), provides:

The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or by a treaty ratified by the United States.[1]

11. Petitioner claims that he should have received a warning instead of a forfeiture for a first-time notification of violation. Section 503(b)(5) of the Act provides that if the person is engaged in activities for which a license, permit, certificate, or other authorization is required, an advance notification in the form of a warning or citation prior to issuance of a forfeiture is not required. 47 U.S.C. § 503(b)(5). In addition, licensees are responsible for knowing the rules that govern the radio service in which their station is operated.[2] Moreover, this was a serious violation.

12. Petitioner has provided no facts or other information that would justify cancellation or mitigation of the forfeiture. The base forfeiture amount for operating a marine radio on a non-marine frequency is $8,000. Such operation is considered to be a serious violation because it creates a potential for interference to other important radio services. However, because Petitioner is an individual and because there is no record of prior violations of this type by Peititioner, the forfeiture amount was reduced to $2,000.

IV. CONCLUSION

13. For the reasons cited above, we sustain the finding of liability for monetary forfeiture of $2,000. In determining the amount of forfeiture, the Commission's policy regarding forfeiture adjustments was taken into consideration.[3] No further adjustments appear warranted.

V. ORDERING CLAUSES

14. Accordingly, pursuant to Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and Section 1.80(f) of the Commission's Rules, 47 C.F.R. § 1.80(f), IT IS ORDERED, that Dan J. McLean FORFEIT to the United States the sum of two thousand dollars ($2,000) for the willful and repeated violation of Section 301 of the Communications Act.

15. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80(h) of the Commission's Rules, 47 C.F.R. § 1.80(h), that the forfeiture payment must be paid within thirty (30) days of the date of release of this order.[4] Payment should be made by check or money order payable to the Federal Communications Commission, attention NAL Acct. 315AN0023, and must be mailed to:

Federal Communications Commission
P.O. Box 73482
Chicago, Illinois 60673-7482

16. IT IS FURTHER ORDERED that the Field Operations Bureau send by Certified Mail, Return Receipt Requested, one copy of this Order to Petitioner and one copy to his counsel.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

[2] *See Triad Broadcasting Company, Inc.*, 96 FCC 2d 1235, 1242 (1984). *See also* the certification on Petitioner's Restricted Radiotelephone Operator Permit which he is required to have in his possession when operating his radio station.

[3] *See Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993).

[4] Petitioner may contact the Commission's Debt Collection Officer in the Billings and Collections Branch, Stop Code 1110A2, 1919 M Street, N.W., Washington, DC 20554, if he is unable to pay the full amount within the period designated above.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Jeffrey Robert Koch NAL/Acct. No. 215FE0075
Des Moines, Washington

ORDER

Adopted: April 15, 1994; Released: April 26, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Mr. Jeffrey Robert Koch filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $500 issued for violation of Section 301 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. Section 301. For the reasons noted below, the Bureau reduces the monetary forfeiture amount to $100.

II. BACKGROUND

2. On June 9, 1992, the Federal Communications Commission's (FCC) Ferndale Office issued a Notice of Apparent Liability (NAL) to Mr. Koch. The penalty was imposed for operating an unlicensed radio station on a marine channel. Based on the response from Mr. Koch, the FCC's Ferndale Office issued a Notice of Forfeiture (NOF) for $500 on July 13, 1992. Mr. Koch now appeals. The petitioner contends that he was ignorant of the FCC's rules and is financially unable to pay the penalty. He admits the violation.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments as well as the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed. However, upon further review, we find that the violation is comparatively minor in nature and therefore warrants a forfeiture amount less than that envisioned by the *Policy Statement. Policy Statement,* 8 FCC Rcd 6215 (1993). Thus, the forfeiture amount will be reduced accordingly. We note, however, that ignorance of the FCC's rules does not excuse the violation. Lastly, although the petitioner claims that he is unable to pay the forfeiture, the petitioner failed to submit documentation, such as the financial information requested in the Notice of Apparent Liability, to support this claim. Therefore, a downward adjustment for inability to pay is not warranted.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is GRANTED in part and DENIED in all other respects.

5. IT IS FURTHER ORDERED that Mr. Koch must pay the forfeiture amount of One Hundred Dollars ($100) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 215 FE 0075 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U.S. Attorney for recovery in a civil suit. 47 U.S.C. Section 504(a).

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Mr. Jeffrey Robert Koch.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CENTURY SOUTHWEST CABLE
TELEVISION CORPORATION

Emergency Petition for a Stay
of Enforcement Pending Review

ORDER

Adopted: April 19, 1994; Released: April 21, 1994

By the Acting Chief, Cable Services Bureau:

1. Century Southwest Cable Television Corporation ("Century") filed on April 8, 1994 an Emergency Petition for Stay of the local rate order adopted March 7, 1994 by its local franchising authority, the City of West Hollywood, California.[1] Century requests the Commission to consider the petition on an *ex parte* basis. The local rate order requires Century to establish a new rate schedule conforming regulated rates to those set forth in the rate order, and to refund to subscribers all charges in excess of those calculated using the rates set forth in the rate order, by April 22, 1994.

2. In light of the limited time period in which the Commission must render a decision concerning Century's Petition for Stay before Century must implement the local rate order, and the fact that we have not yet received an opposition filing from West Hollywood, we will stay the effect of West Hollywood's rate order until such time that the Commission has a sufficient opportunity to consider any opposition filings from West Hollywood or other interested parties in our review of Century's petition. Therefore, we will stay the effect of West Hollywood's rate order until May 13, 1994. At that time, we will endeavor to act upon Century's Petition for Stay as quickly as practical. This order will not prejudice the substance of any claims made by Century in its Petition for Stay, or by West Hollywood or other interested parties in subsequent filings.

3. Accordingly, IT IS ORDERED, pursuant to 47 C.F.R. § 1.45(e), that the local rate order adopted by the City of West Hollywood, California is STAYED until May 13, 1994. This action is taken by the Acting Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's rules.

4. IT IS FURTHER ORDERED, That this *Order* IS EFFECTIVE on April 21, 1994.

FEDERAL COMMUNICATIONS COMMISSION

Alexandra M. Wilson
Acting Chief, Cable Services Bureau

[1] Under the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), and the Commission's implementing regulations, local franchising authorities may regulate rates for basic cable service and associated equipment. *See* Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(b), 47 U.S.C. § 543(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Federal Petroleum NAL/Acct. No. 315KI0006
Lyford, TX 78569

ORDER

Adopted: April 12, 1994; Released: April 28, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Federal Petroleum (Federal) through their Attorneys, filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $8000 issued pursuant to Section 503(b), 47 U.S.C. §503(b), for violation of Section 301 of the Communications Act of 1934, as amended (the Act) 47 U.S.C. §301. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On November 4, 1992, the Kingsville, Texas FCC Office issued a Notice of Apparent Liability (NAL) to Federal. The penalty was imposed for willful violation of Section 301 of the Communications Act of 1934, as amended. On December 1, 1992, a response was received from counsel for licensee. In the response, it was stated that since no renewal notice was received, Federal was not aware that their license had expired. Federal also contended that the manager of the cited office was not aware of the rules requiring licenses to be renewed and that unlicensed operation ceased immediately when the expired license (11 years) was brought to Federal's attention. Based on the response from Federal, the Kingsville Office issued a Notice of Forfeiture (NOF) for $8000 on December 28, 1992. Federal now appeals. The petitioner contends that the Lyford office of Federal had never received any license renewal notice or that the office had not received notice that it was operating without a license or a license that had expired.

III. DISCUSSION AND CONCLUSION

3. All arguments raised by Federal in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed.

Accordingly, the forfeiture amount is affirmed.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that Federal Petroleum must pay the forfeiture amount of $8000 within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 315KI0006 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Federal Petroleum and counsel.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

ET Docket No. 92-298

In the Matter of

Amendment of the Commission's
Rules to Establish a Single AM
Radio Stereophonic Transmitting
Equipment Standard

SUPPLEMENTAL ORDER

Adopted: April 12, 1994; Released: April 28, 1994

By the Commission:

INTRODUCTION

1. By this Supplemental Order, the Commission affirms its decision to adopt the Motorola C-Quam system as the standard for the stereophonic AM broadcast radio service. On November 23, 1993, the Commission released a *Report and Order* implementing the C-Quam AM stereo standard. Subsequent to the release of the *Report and Order,* it has come to our attention that a number of comments had been inadvertently overlooked. After review of these additional comments, we find no new evidence or information that warrants a change in our decision in this matter.[1]

BACKGROUND

2. In response to the Telecommunications Authorization Act of 1992 (Authorization Act), the Commission adopted a *Report and Order* in this proceeding selecting the C-Quam system as the single AM stereo transmission standard.[2] Subsequent to the release of the *Report and Order,* it was found that twenty comments had inadvertently not been considered. Most of these comments were improperly or untimely filed.[3] Nevertheless, because other late and improperly filed comments were considered in the *Report and Order,* we have elected to consider all of these comments at this time.

3. All of the previously unconsidered comments oppose the Commission's proposed selection of C-Quam as the AM stereo standard. Most parties generally allege some form of technical superiority of the Kahn system, or conversely, some technical inferiority of the C-Quam system. Specifically, these parties claim the C-Quam system exhibits technical flaws, including "platform motion,"[4] loss of coverage, and increased adjacent channel interference.[5] In addition, some commenting parties recommend that additional testing or evaluation be undertaken.[6] Other parties question the compatibility of C-Quam with future AM band digital audio transmission systems. Hundley Batts Sr. and John Hain, co-owner and chief engineer, respectively, of AM station WEUP, argue that adopting a system other than Kahn's as the standard will force them to re-engineer their station's antenna array.

4. Some parties contend that Motorola unfairly manipulated the market place to create its competitive lead.[7] Jolls asserts that consumers were denied free choice of AM stereo systems because of the non-availability of anything but C-Quam receivers in vehicles. BDI argues that the market penetration of C-Quam is too small for it to be considered a *de facto* standard, and thereby be the primary basis for our decision to select C-Quam as the standard. BDI also asserts that the Commission should mandate multi-system receivers. Cutforth argues that, even with the selection of a standard, other systems should be allowed on a non-interfering basis. Forsman questions the need for an AM stereo standard. Several parties, in supporting the Kahn system, point out the benefits of the Kahn "POWER-side" mode of operation for avoiding adjacent channel interference and easing the tuning of the received signal.[8]

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[1] We recognize that, because a petition for review of the Commission's action in this proceeding has been filed, *Leonard R. Kahn v. FCC,* No. 941078 (D.C. Cir. filed 2/7/94), and no petition for reconsideration has been filed, the proceeding is technically no longer before the Commission. Nevertheless, we feel it is important to set forth the Commission's views on the issues raised in the comments that were not previously considered.

[2] *See* Telecommunications Act of 1992, P. L. No. 102-538. *See* also *Report and Order,* FCC 93-485 (released November 23, 1993).

[3] Of the 20 comments not considered, 11 were filed after the cutoff date for reply comments and at least 17 were filed without copies as required by Section 1.419 of the Commission's rules. *See* 47 C.F.R. § 1.419. One additional commenting party, Hazeltine Corporation, was omitted from the comment list in Appendix C of the *Report and Order,* but its comments were fully considered and discussed in the *Report and Order.*

[4] "Platform motion" is a term used to describe a deterioration of the received signal under weak signal, multipath, or interference conditions which manifests itself as a shifting of the stereo image between the two channels in an uncontrolled and unpredictable manner."

[5] *See,* for example, comments of Hughes H. Brewer, Broadcast Devices, Inc. (BDI), E. P. De La Hunt, Joseph A. Dentici, David Smith Forsman, Interstate Broadcasting Company (Interstate), Richard W. Jolls, Robert M. Kanner, Patrick M. O Gara, and Ridgefield Broadcasting Corporation (Ridgefield).

[6] *See,* for example, comments of BDI, Cutforth, De La Hunt, Dentici, Interstate, Jolls, O Gara, Ridgefield, Sherwood, and WJNR Radio, Inc.

[7] *See,* for example, comments of Ridgefield and John Bailie.

[8] *See,* for example, comments of O Gara, Ridgefield, Richard N. Ross, Universal Broadcasting Corporation, and WJNR Radio, Inc. POWER-side operation, as distinct from stereo operation, involves modulating an AM transmitter with two independent sidebands, containing identical program material, but with intentional level and frequency response differences. This system is implemented with a Kahn independent sideband stereo exciter and is claimed to have certain advantages for reception with monophonic receivers, particularly in adjacent channel interference situations.

DISCUSSION

5. The relative technical performance of the Kahn and C-Quam systems was addressed in the *Report and Order,* including specifically the issues of platform motion, coverage area and adjacent channel performance.[9] With regard to platform motion, we concluded that recent improvements in receiver design mitigate such effects. Modern C-Quam receivers compensate for platform motion by gradually reducing stereo channel separation as signal-to-noise ratios deteriorate, creating a smooth transition to monaural operation when signals are weak. Further, as previously noted, such weak signal effects as platform motion generally occur beyond a station's protected coverage area. Claims of loss of coverage area and increased adjacent channel interference with C-Quam appear to be based on allegations that the C-Quam signal must be modulated at lower levels to avoid excessive bandwidth. As stated in the *Report and Order,* we find no evidence that currently authorized C-Quam equipment violates the Commission's bandwidth requirements when operated properly.[10] The additional commenting parties present no new analysis or measurements to support their claims. We further note that the record contains no complaints of lost coverage from the hundreds of broadcasters currently using the C-Quam system.

6. With regard to suggestions that further testing and evaluation should be performed, in the *Report and Order* we noted that the Motorola and Kahn systems have been tested and comparatively evaluated over the years, and both systems were found to have technical advantages and disadvantages.[11] As stated, we have no reason to expect that further testing would reveal any new information. Moreover, any further testing would lead to additional delays and would be inconsistent with the statutory time restrictions on this proceeding.

7. The issue of compatibility with future AM band digital audio broadcast systems was also discussed in the *Report and Order.*[12] We noted that there is no reason to believe that either the C-Quam system or the Kahn system would have any advantage in compatibility with future digital systems. We further observed that, as we have no specific information on the likely design of such systems, we would not presuppose to consider fairly issues relating to their compatibility with AM stereo technologies.

8. With regard to WEUP's comments that protest the potential costs associated with re-engineering the station's antenna array to accommodate C-Quam transmission, we observe that conversion of any station to any AM stereo system, either initially or from one system to another, will certainly involve re-engineering costs. WEUP's co-owner and chief engineer have not provided any evidence from which to conclude that the conversion cost to the relatively few stations using the Kahn system outweigh the benefits to the public of requiring use of the C-Quam system.

9. We stated in the *Report and Order* that we were not persuaded that Motorola unfairly manipulated the market to deny any segment of the industry or the public a free choice.[13] No new information in the additional comments convinces us otherwise. While vehicular receivers for any system other than C-Quam may indeed be generally unavailable, this is a result of market choices by vehicle and receiver manufacturers in anticipating the preference of their customers. We disagree that existing market penetration is inadequate to determine whether a *de facto* standard exists. As stated in the *Report and Order,* we find that there was indeed sufficient convergence in the market place toward C-Quam during the past twelve years of unrestricted competition between the systems to conclude that the public interest would be best served by adopting C-Quam as the standard.[14]

10. With regard to the comments that the Commission should mandate multiple system receivers, allow systems other than the standard to be operated on a non-interference basis, or not adopt a standard, we find these positions to be at inconsistent with the Congressional mandate in this matter. Specifically, the Authorization Act requires that we select a single standard for AM stereo.

11. In the *Report and Order,*[15] we determined that stations employing POWER-side operation are not subject to the provisions of the stereophonic transmission standard and use of the Kahn system for such operation could continue. We stipulated, however, that the program material fed to both channels of the exciter must be identical in content. Thus, we believe that the decision made in the *Report and Order* is responsive to those parties wishing to use the Kahn system for POWER-side operation.

12. In summary, we remain convinced that the Motorola C-Quam system is the appropriate choice for the AM stereo standard. We find no arguments in any of the previously unconsidered comments that persuade us to modify any of the decisions previously adopted in the *Report and Order.*

13. Accordingly, IT IS ORDERED that this Supplemental Order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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[9] *See,* for example, *Report and Order,* at para. 12.
[10] *See Report and Order,* at para. 24.
[11] *See Report and Order,* at para. 12.
[12] *See Report and Order,* at para. 23.
[13] *See Report and Order,* at para. 14.
[14] *See Report and Order,* at para. 16.
[15] *See Report and Order,* at paras. 21-22.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Petitions Requesting Changes in	RM-8405
Certain Operator Classes in the	RM-8391
Amateur Service.	RM-8406

ORDER

Adopted: April 20, 1994; Released: April 28, 1994

By the Acting Deputy Chief, Private Radio Bureau:

1. Three petitions requesting changes in the amateur service rules have been received. They each concern the telegraphy requirements for obtaining amateur operator licenses.

2. In RM-8405, Dr. Larry Jack seeks elimination of the 20 words per minute (wpm) telegraphy requirement for the Amateur Extra Class operator license. In RM-8391, Mr. Rolf Jespersen proposes three classes of amateur operator license, only two of which would require telegraphy proficiency. The minimum speed requirement would be 13 wpm for the Amateur Extra Class and 5 wpm for the General Class. In RM-8406, Messrs. Dale Bagley and Vernon Swaine request a Novice Class operator license that has no telegraphy requirement.

3. No comments were filed to these petitions. The current operator classes and examination requirements were developed in accordance with the expressed desires of the amateur service community through numerous rule making proceedings that generated many thousands of comments. The amateur community indicated on each occasion that it strongly desires to preserve communications by telegraphy. After considering the views expressed in those proceedings, the Commission adopted the rules that are now codified in Part 97. *See* 47 C.F.R. §§ 97.1-97.527. The petitioners have not presented sufficient evidence to justify revisiting these matters at this time.

4. In view of the foregoing, and pursuant to Section 1.401(e) of the Commission's Rules, 47 C.F.R. § 1.401(e), rule making petitions RM-8405, RM-8391, and RM-8406 are repetitive and ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Robert H. McNamara
Acting Deputy Chief,
Private Radio Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Lightning Broadcasting Company against Enstar Communications — CSR-4056-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: April 6, 1994; Released: April 28, 1994

By the Chief, Cable Services Bureau:

1. On August 20, 1993, a petition on behalf of Lightning Broadcasting Company ("LBC"), licensee of low power television Station W41BL (Channel 41), Effingham, Illinois, was filed with the Commission claiming that Enstar Communications ("Enstar"), operator of a cable television system serving Pana, Illinois, had declined to carry the station, even though W41BL is a fully-qualified low power television within the meaning of §76.56(b)(3) of the Commission's Rules and §§614(c) and (h)(2) of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). No opposition to this petition has been filed.

2. In support of its petition, LBC argues that W41BL: 1) is a 24-hour per day low power television station broadcasting from a 1 kw transmitter located at north latitude 39°16'19", west longitude 88°30'32"; 2) is located within 35 miles of Enstar's principal headand at Pana, Illinois; 3) is in full compliance with Part 73 of the Commission's rules governing children's programming, political broadcasting and Equal Employment Opportunity; 4) Effingham, its community-of-license, has a population of 11,851 and is not located within the 160 largest metropolitan statistical areas; 5) provides locally-originated programming; and 6) there are no full power television stations licensed to serve Effingham or its political subdivision. LBC states that it notified Enstar of its obligation to carry W41BL on June 21, 1993, but the system refused carriage on August 3, 1993, citing W41BL's poor signal quality as its reason. Although LBC believes W41BL's signal strength to be adequate, it indicated to Enstar in its original letter that it would provide whatever equipment would be necessary should its signal prove to be inadequate. To date, however, LBC maintains that Enstar has still refused carriage despite the fact that it has adequate channel capacity to carry its station on the system.[1]

3. Section 614(a) of the Communications Act of 1934, as amended, requires the carriage of "qualified" low power television (LPTV) stations in certain limited circumstances. *See* 47 U.S.C. §534(a). A LPTV station that conforms to the rules established for LPTV in stations in Part 74 of the Commission's Rules will be considered "qualified" only if: 1) it broadcasts for at least the minimum number of hours of operation required under 47 C.F.R. Part 73; 2) it adheres to Commission requirements regarding nonentertainment programming and employment practices;[2] 3) it complies with interference regulations consistent with its secondary status; 4) it is located no more than 35 miles from the cable system's headend and delivers to the principal headend an over-the-air signal of good quality; 5) the community of license of the station and the franchise area of the cable system are both located outside the largest 160 Metropolitan Statistical Areas (MSA's) on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and 6) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system. *See* 47 U.S.C. §534(h)(2); 47 C.F.R. §76.55(d).

4. Since Enstar has not submitted any engineering data to the Commission to support the contention it made to LBC regarding W41BL's signal quality, we find that W41BL is a qualified low power television station and that it is entitled to carriage on the Pana, Illinois cable system. Accordingly, the complaint filed August 20, 1993, by Lightning Broadcasting Company IS GRANTED pursuant to §614(c) (47 U.S.C. §534(c)) of the Communications Act of 1934, as amended, and Enstar Communications IS ORDERED to commence carriage of low power television Station W41BL forty-five (45) days from the release date of this Order. This action is taken by the Chief, Cable Services Bureau, pursuant to delegated authority.

FEDERAL COMMUNICATIONS COMMISSION

Alexandra M. Wilson, Acting Chief
Cable Services Bureau

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[1] LBC states that the *1993 Television and Cable Factbook* indicates that Enstar has a channel capacity of 35 on its Pana system, 7 channels of which are currently available.

[2] Section 614(h)(2)(B) provides that the LPTV station must meet "all obligations and requirements applicable to television broadcast stations under Part 73 of Title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming: programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission [must] determine that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of geographic distance of such full power stations from the low power station's community of license." 47 U.S.C. §534(h)(2)(B); 47 C.F.R. §76.55(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-557

In re Applications of

PRAISE BROADCASTING NETWORK, INC. — File No. BPH-880519ME

WRIGHTSVILLE BEACH RADIO LIMITED PARTNERSHIP — File No. BPH-880519MI

For Construction Permit for a
New FM Station on Channel 229A
in Wrightsville Beach, North Carolina

Appearances

Christopher D. Imlay, on behalf of Praise Broadcasting Network, Inc.; and *William D. Silva*, on behalf of Wrightsville Beach Radio Limited Partnership.

SUPPLEMENTARY INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH CHACHKIN

Issued: April 21, 1994; Released: April 29, 1994

Preliminary Statement

1. The Review Board, by *Memorandum Opinion and Order*, 8 FCC Rcd 5457 (1993) remanded this case for hearing on the following issues:

> (a) To determine whether Wrightsville Beach Radio Limited Partnership is financially qualified to be a Commission licensee.
>
> (b) To determine whether Wrightsville Beach Radio Limited Partnership falsely certified its financial qualifications and, if so, the effect thereof on its qualifications to be a Commission licensee.

2. A prehearing conference was held August 31, 1993. Hearings were held on October 12-13, 1993 and the record was closed on the latter date. Proposed findings of fact and conclusions of law were filed November 19, 1993; replies were filed November 29, 1993.

Findings Of Fact

3. WBRLP is a limited partnership consisting of one general partner, Martha Spainhour,[1] and one limited partner, Coolidge Road Corporation (CRC). Joseph Kenary is the president, treasurer, sole director and sole stockholder of CRC. Spainhour holds one hundred percent of the voting interest and twenty percent of the equity in WBRLP. CRC has no voting interest and eighty percent of the equity.

4. Spainhour signed the application on May 18, 1988, and certified that:

> sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months.

Spainhour estimated that WBRLP will need $200,000 to construct and operate for three months without relying on revenues. To meet these costs, WBRLP is relying on two letters, one from the American Security Bank of Washington, D.C. to Kenary dated May 18, 1988, and one from Kenary to Spainhour also dated May 18, 1988.

5. The American Security Bank provides:

Dear Mr. Kenary:

We are familiar with your proposal to file an application with the Federal Communications Commission for a new radio broadcast license for an FM Station in Wrightsville Beach, N.C.

The Bank is interested in lending you up to $200,000 for the purpose of funding your venture subject to the following stipulations:

(1) You shall be awarded the license from the Federal Communications Commission;

(2) at the time the license is awarded, all credit criteria of the bank shall be met;

(3) interest shall be calculated at 2.0 percent above the prevailing base rate of this Bank payable monthly in arrears.

(4) there shall be a one year moratorium on repayment of the principal; repayments thereafter shall be made in no less than 20 equal quarterly payments.

(5) execution and delivery of a loan agreement, promissory note and other customary documents, in form and substance satisfactory to the Bank, including but not limited to receipt of a guarantee from a financially acceptable individual and a security interest in the assets of the station. We recognize, however, that the FCC may require notification and a delay in conjunction with repossession of certain equipment in the event of a default.

This letter is to provide reasonable assurance; it does not constitute a final commitment of funds.

Sincerely,

Gregg E. Johnson

[1] Spainhour currently uses her maiden name, Martha Lee, but is referred to herein as Spainhour for consistency.

WBRLP Ex. 6, p. 5.

6. Kenary's letter to Spainhour, also dated May 18, 1988, reads as follows:

Dear Martha:

I have received reasonable assurance from American Security Bank of Washington, D.C. that it will provide me with $200,000 in loan funds for use by Wrightsville Beach Radio Limited Partnership, all subject to the conditions set forth in its letter to me of this date.

On behalf of Coolidge Road Corp., this is to provide you with reasonable assurance of the availability of such funds for Wrightsville Beach Radio Limited Partnership subject to their availability from the Bank.

Kindest personal regards.

WBRLP Ex. 6, p. 6.

7. At the time he obtained the bank letter from American Security Bank, Kenary had had a long relationship with the bank. He personally knew the president of the bank. He and his wife had maintained a joint checking account with the bank since 1963, over 25 years. The bank had financed the purchase of both of their homes. The bank had also engaged Kenary as an attorney in several matters over the years. Finally, Kenary was the founder, chairman and president of a venture capital company which had co-invested with the bank's SBIC in several ventures. WBRLP Ex. 6, p. 1; Tr. 453.

8. King Lowe, then executive vice president and later president of the bank, referred Kenary to Gregg Johnson regarding the loan for the Wrightsville Beach radio station. Tr. 533-534. Johnson served as Vice President of the American Security Bank from March 1984 until March 1992 and, in that capacity, managed the bank's Communications Lending Division. He supervised six loan officers and was responsible for a portfolio of Two Hundred Fifty Million Dollars ($250,000,000). WBRLP Ex. 7.

9. Kenary recalls discussing the Wrightsville Beach application with Johnson and his desire to meet the FCC's financial qualifications requirements. In this connection, Kenary believes that he provided Johnson with a copy of his financial statement dated May 9, 1988. WBRLP Ex. 6, p. 2; Tr. 457-458. This financial statement shows that Kenary had a net worth in excess of one million dollars at the time. WBRLP Ex. 6, pp. 7 & 8. Kenary discussed the proposed station with Johnson and provided him with information concerning the limited partnership structure and the general partner. Tr. 456. According to Kenary, Johnson seemed very knowledgeable about the FCC's requirements. Tr. 456.

10. Kenary understood that the bank was relying on his personal financial situation in extending a loan and would look to him personally for repayment. The bank was not relying on the success of the radio station. Kenary also understood that the bank would require his personal guarantee and that he was prepared to provide the guarantee if necessary. WBRLP Ex. 6, p. 2.

11. Johnson issued the bank letter dated May 18, 1988, to Kenary. He was familiar with the financial requirements of the Commission and was frequently approached to issue loan commitment letters providing applicants with reasonable assurance of bank financing. However, Johnson stated that he rarely issued such letters. In the case of Kenary, Johnson thinks he may have seen a business plan, but would not have paid much attention to it because the bank discounted such plans for start-up businesses in small markets such as this one. The bank, according to Johnson, was looking to Kenary and his assets in making the loan. WBRLP Ex. 7, p. 1. According to Johnson, Kenary had a reasonably broad relationship with the bank involving accounts at the bank and a long-standing personal relationship with an officer of the bank. Tr. 533-534. Johnson also recalls discussions with Kenary concerning another bank letter for a radio station in which Kenary's daughter had some involvement. Tr. 534-535. Although he is not certain that there was an earlier letter, Johnson stated that if there had been one, the bank would have assumed both loans were obligations of Kenary in issuing the second letter. Tr. 548.

12. Johnson had no specific recollection of seeing Kenary's financial statement, but believes that he was generally aware of its contents. WBRLP Ex. 7. Johnson was knowledgeable about Kenary's financial condition at the time of issuance of the bank letter and the bank looked to Kenary and his personal financial condition in making the loan. Tr. 538-539, 543. Johnson was confident of Kenary's ability to repay the loan. Tr. 543-545. Johnson stated that the bank was not concerned with who else was involved in the venture. Tr. 538. Johnson stated that American Security wrote very few of these FCC related letters despite frequent requests for them. The letters which the bank did issue were intended to provide the applicant with a reasonable assurance that the loan would be made. WBRLP Ex. 7.

13. The bank letter (paragraph 5, *supra),* refers to "receipt of a guarantee from a financially acceptable individual." According to Johnson, Kenary's guarantee, alone, would have been sufficient. The language was more broadly framed to provide Kenary with greater flexibility in choosing to provide other security. WBRLP Ex. 7. Johnson recalls discussions with Kenary regarding the collateral, his personal assets, and what they might be worth. Johnson stated that the bank would not have required a specific security interest in Kenary's personal assets because the amount of the loan was relatively small. Johnson stated that Kenary was more than willing to provide a personal guarantee and understood this requirement. Tr. 550. It was Mr. Johnson's assumption at the time of the letter that the bank would have been prepared to make a loan and would be prepared to make the loan today if Kenary's financial situation were the same. Tr. 549.

14. Kenary obtained the bank letter on May 18, 1988, and immediately transmitted it to WBRLP's communications attorney. He is not certain whether he personally transmitted the letter to Spainhour on May 18, but probably did so. He is certain that he communicated its contents to her then. WBRLP Ex. 6, p. 1. At the same time, Kenary provided Spainhour with a letter also dated May 18, 1988, from himself on behalf of Coolidge Road Corp., in which the American Security letter was referenced. (See paragraph 6, *supra).* As recited in the letter, Kenary through CRC will loan the money to WBRLP on the same terms as the loan from the American Security Bank to Kenary. WBRLP Ex. 6, p. 6; Tr. 470. Kenary will pass these funds to CRC either through a capital contribution or a loan. Tr. 471-472.

15. When Spainhour certified that WBRLP had sufficient funds to construct and operate for three months on May 18, 1988, she was relying on the letter from the American Security Bank providing Kenary with reasonable assurance of $200,000 and on Kenary's letter stating that he would

make these funds available to WBRLP on behalf of CRC. WBRLP Ex. 5. She either had these letters in hand when she signed the application or her attorney had them in hand and so advised her. In any event, she did have the originals on May 19 when the application was filed. Tr. 403-405. Spainhour understood that Kenary through CRC would loan the $200,000 to WBRLP on the same terms and conditions set forth in the American Security bank letter. Tr. 424. Spainhour knew at the time that the bank letter would require that the assets of the station would be used as collateral and she had no objection. She fully expected that. Tr. 418-419. Also, Spainhour was familiar with and had no objection to the terms and conditions of the American Security loan. Tr. 420.

16. Spainhour was relying on the proceeds of the loan for construction and operation costs. Tr. 402. Prosecution expenses will be paid from capital contributions from herself and Kenary. She is required to pay a total of $15,000 in capital contributions and Kenary through CRC is required to pay a total of $180,000. Tr. 400-401. Spainhour has paid approximately $12,000 to the partnership to date which has been used for prosecution expenses. Tr. 401. The partnership agreement requires the general partner to pay one third of the $15,000 upon signing the agreement, one third upon designation, and one third upon the award of a construction permit to WBRLP. WBRLP Ex. 3, ¶ 3.1.1. Consequently, under the partnership agreement, the general partner is obligated to pay an additional $3,000 upon award of a construction permit to WBRLP. The limited partner is required to pay 3% of the total capital contribution of $180,000 upon signing the agreement, 2% upon designation for hearing, and the 85% upon award of a construction permit to WBRLP. WBRLP Ex. 3, ¶ 3.1. In this connection, Kenary explained that the figure of 87% in the partnership agreement is an inadvertent error. The first two contributions totalling $27,000 have been paid. WBRLP Ex. 6, p. 1. Consequently, under the partnership agreement, the limited partner is obligated to pay an additional $153,000 upon the award of a construction permit to WBRLP.[2]

17. In addition to meeting its capital contributions, CRC has loaned money to the partnership for prosecution expenses. These loans are evidenced by promissory notes totalling around $35,000. The notes, which are payable to CRC, are to be repaid only if WBRLP is awarded a construction permit. According to Spainhour, the notes will be repaid in one of two ways; either from the remainder of CRC's capital contributions or by reducing the balance of the capital contributions still due by the amount of the outstanding loans. Tr. 405-407; Praise Ex. 21. Kenary intends to continue loaning funds to the partnership to cover prosecution expenses. Tr. 484.

18. After this case was remanded, Kenary contacted the bank and asked it to clarify its letter of May 18, 1988. Kenary provided the bank with a current financial statement dated September 15, 1993. This statement shows that Kenary's net worth now exceeds $1.5 million and he has current liquid assets also in excess of $1.5 million. WBRLP Ex. 6, pp. 2 & 10.

19. In response to his request, the bank sent Kenary a letter dated September 21, 1993, which reads:

> Reference our letter to you of May 18, 1988, we have seen and reviewed your statement of assets and liabilities dated September 15, 1993. Your financial condition expressed therein continues by itself to be sufficient basis for reiterating our previous letter, which we hereby do.
>
> To clarify and remove the ambiguity found by the Review Board of the Federal Communications Commission in its Memorandum Opinion and Order adopted July 30, 1993 in MM Docket No. 90-557, you may consider the word "interested" in the letter to mean "willing." While not a legally binding commitment, the Bank's intent was and is to express its firm intention to make the loan, future conditions permitting.
>
> I hope this is satisfactory. Otherwise please let me know.

WBRLP Ex. 6, p. 9.

20. The September 21, 1993, bank letter was signed by Thomas T. Firth, III, a Vice President of the American Security Bank and Managing Director of the Private Banking Group. Firth oversees and reviews all loan requests for private banking clients. According to Firth, the Private Banking Group typically does business with affluent, high net worth, high income individuals that come to the bank to finance investments. Tr. 505. Firth's willingness to provide this letter was based upon his review of Kenary's financial statement and discussions with William Burke, an officer of the bank and former general counsel, who knew Kenary and his family. Tr. 509 & 518. Firth stated that he would not characterize the letter as an accommodation to Burke. Rather, Firth made the decision to issue the letter on his own accord, based upon his review of Kenary's financial statement, the ruling of the Review Board and a draft letter provided by Kenary. Tr. 520. According to Firth, in private banking, the bank typically looks at the borrowers's assets and also his income[3] in making a loan. It is Firth's view that the bank would have approved the loan to Kenary if he had asked for it. Tr. 511 & 513. Finally, Firth stated that Kenary's personal financial position was strong enough to support the loan, that the loan was a personal loan and the identity of his partners in the venture, therefore, did not matter. Tr. 522-523.

21. Both Johnson and Firth relied on Kenary's financial condition in issuing the reasonable assurance letter. Tr. 509, 512, 522 & 523, 539 & 541. Neither was concerned about the financial condition of the general partner since the loan would be to Kenary personally and they would look to him for repayment. Tr. 523 & 546.

22. Pursuant to the limited partnership agreement, a management fee "not to exceed Twenty Five Thousand Dollars ($25,000) per annum [will be] payable to the General Partner by the Partnership for her services in managing the business of the Partnership." WBRLP Ex. 3,

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[2] The $200,000 bank loan did not operate to amend CRC's obligation under the partnership agreement to make capital contributions of $180,000 to WBRLP. Rather, the obligation to make capital contributions of $180,000 is a "separate, free-standing still binding provision." WBRLP Ex. 6, p. 4.

[3] In this connection, WBRLP provided copies of Kenary's income tax returns for the years 1988-1992 to Praise in response to a motion to produce. Tr. 514.

Article I. According to Spainhour, the management fee, which does not commence until the station goes on the air, will be paid from station revenues. Tr. 401 & 418; WBRLP Ex. 3, ¶ 5.3.2.

23. The partnership agreement also provides that 95% of the profits, losses and credits shall be allocated to the limited partners and 5% shall be allocated to the General Partner until the aggregate distributions of Cash Flow and Refinancing proceeds to each Limited Partner equals his Transition Amount. WBRLP Ex. 3, ¶ 8.1.1. Kenary stated that this provision is normal business practice and is intended to allow a cash investor to recover his or her investment and a first call on a reasonable rate of return. The effect of this provision is that if there is no profit, there is no payment. WBRLP Ex. 6, p. 3.

CONCLUSIONS

Financial Qualification Issue

24. In order to be financially qualified, an applicant must have reasonable assurance of having sufficient funds to construct and then operate the station for three months. The Commission has defined "reasonable assurance" as "[a] present firm intention to make a loan, future conditions permitting...." *Merrimack Valley Broadcasting, Inc.*, 82 FCC 2d 166, 167 (1980). Where an applicant relies on a bank loan, it is not Commission "practice to second guess the bank's lending judgment." *Liberty Productions*, 7 FCC Rcd 7581, 7584 (1992); see also *Harrison County Broadcasting Co.*, 6 FCC Rcd 5819, 5821-5822 (Rev. Bd. 1991); *Annette B. Godwin*, 8 FCC Rcd 4098, 4101 (Rev. Bd. 1993). Rather, the Commission's concern is whether the bank letter affords "reasonable assurance." To determine whether the "reasonable assurance" standard has been met, the Commission considers the following factors: "whether the borrower's qualifications have been preliminarily reviewed by the bank; whether adequate collateral has been demonstrated; and whether the tentative terms are specifically identified and acceptable to the lender as well as the borrower." *Liberty, supra*, at 7584.

25. To meet its proposed estimated expenses of $200,000, WBRLP proposes to rely on two letters, one from the American Security Bank to Kenary, the sole principal of CRC, WBRLP's limited partner, dated May 18, 1988, and one from Kenary, on behalf of CRC, to Spainhour, WBRLP's general partner, also dated May 18, 19888 agreeing to loan the money to WBRLP on the same terms as the loan from the bank to Kenary. Applying the principles enunciated in *Liberty*, the bank letter clearly passes muster.

26. The record establishes that Kenary had a long-standing relationship with the bank; that the bank was fully familiar with his financial condition at the time of issuance of the bank letter; and that the bank letter was predicated on Kenary's personal financial condition and the bank's confidence in his ability to repay the loan. In this connection, Kenary's net worth exceeded one million dollars at the time of issuance of the letter. Moreover, both the bank official who issued the letter and a current bank official have reaffirmed the bank's intention to provide Kenary with "reasonable assurance" that the funds would be available. In this regard, any ambiguity about the bank's intent over the use of the word "interested" in the 1988 letter has been erased by the bank's 1993 letter. Also, the testimony of the bankers establish that adequate collateral has been demonstrated since the bank was satisfied with Kenary's personal guarantee which Kenary was prepared to give. Also, the third factor recited in *Liberty* is satisfied since the bank letter relied on contains the essential terms and the testimony of the bankers, Kenary and Spainhour makes plain that the terms are acceptable to the lender as well as the borrower.

27. In sum, based on the evidence adduced, the 1988 bank letter coupled with Kenary's 1988 letter to Spainhour provide "reasonable assurance" of the availability of funds to WBRLP for construction and initial operation of its proposed station. The record also makes plain that none of the $200,000 from the bank loan will be expended for prosecution expenses. As reflected in the findings (paragraphs 16 and 17), prosecution expenses have been and will continue to be paid from capital contributions from the general and limited partner as well as loans from CRC, the limited partner, to WBRLP. In this regard, contrary to Praise's assertion, the proposed management fee of $25,000 to Spainhour will not impact on WBRLP's financial posture since such fee, which does not commence until the station goes on the air, will be paid out of station revenues. The financial qualification issue is, therefore, resolved in favor of WBRLP.

False Certification Issue

28. The false certification issue calls for a determination whether WBRLP tried to deceive the Commission as to its financial qualifications at a time when it knew the certification was not true. *Armando Garcia*, 3 FCC Rcd 1065, 1067 (Rev. Bd. 1988), *review denied*, 3 FCC Rcd 4767 (1988). The issue is resolved favorably for WBRLP since there is no evidence that WBRLP engaged in deception in certifying it was financially qualified. On the contrary, the record makes amply clear that WBRLP has acted in good faith in its dealings with the Commission. As discussed in the preceding paragraphs, the May 1988 bank letter was *bona fide*, not an "accommodation", and "reasonable assurance" of its availability has been established. Additionally, Kenary's May 1988 letter to Spainhour was also given in good faith since Kenary through CRC intends to loan the money to WBRLP on the same terms as the loan from the bank to Kenary. Further, Spainhour acted properly in certifying that WBRLP had sufficient funds available from committed sources to construct and operate the requested facilities for three months. The record is unclear whether Spainhour had in hand the two documents when she signed the WBRLP application on May 18, 1988 or on May 19, 1988, when the application was filed. There is no doubt, however, that when she signed the application on May 1988, she knew that Kenary had received the letter from the bank and had been apprised of its contents. Also, she knew that Kenary had agreed to loan these funds to WBRLP. Under these circumstances, it was reasonable for Spainhour to rely on the availability of the bank letter and the Kenary letter in signing the certification on behalf of WBRLP. Moreover, review of the documents demonstrate that her reliance on these letters was justified and her certification accurate and truthful. In this connection, the fact that Spainhour did not see Kenary's financial statement when she certified is of no consequence since her certification was based on the letters. Accordingly, IT IS ORDERED, That unless an appeal from this Supplemental Initial Decision is taken by a party, or it is reviewed by the Commission on its own motion in accordance with Section

1.276 of the Rules,[4] the grant of the application of Wrightsville Beach Radio Limited Partnership for a construction permit for a new FM station on Channel 229A in Wrightsville Beach, North Carolina IS AFFIRMED; and the application of Praise Broadcasting Network, Inc. IS DENIED.[5]

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin
Administrative Law Judge

[4] In the event exceptions are not filed within 30 days after the release of this supplemental initial decision, and the Commission does not review the case on its own motion, this supplemental initial decision shall become effective 50 days after its public release pursuant to Section 1.276(d).

[5] The Commission's Public Notice (FCC 94-41 released February 25, 1994) freezing Comparative Proceedings provides: "Where a proceeding has been remanded to an ALJ for consideration of a basic qualifications issue, the ALJ will issue a supplemental initial decision addressing the remanded issue.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of Cross Country Telecommunications, Inc.

File No. 50030-CM-MP-93

For Authority to Modify Multipoint Distribution Station WNTD967 on Channel H3 at Dallas, Texas

ORDER ON RECONSIDERATION

Adopted: April 20, 1994; Released: April 29, 1994

By the Chief, Domestic Facilities Division:

1. *Introduction.* Cross Country Telecommunications, Inc. (Cross) filed a petition for reconsideration of the return as unacceptable for filing by the Domestic Facilities Division (Division), on delegated authority, of its application for authority to modify Multipoint Distribution Service (MDS) station WNTD967 on the H3 channel at Dallas, Texas. Cross requested reinstatement of its modification application, *nunc pro tunc*.

2. *Background.* Section 21.902(i) requires that Cross submit, on the 60th day after public notice, an analysis which demonstrates a lack of harmful interference to each authorized Instructional Television Fixed Service (ITFS) station, cochannel or adjacent-channel, with a transmitter site within 50 miles of the transmitter site proposed in the Cross modification application. The application return notification advised Cross that "[t]he analysis submitted by the applicant fails to demonstrate a lack of harmful interference; instead the analysis demonstrates harmful interference." On the day the modification application was filed, there were five (5) authorized ITFS stations, cochannel or adjacent-channel, with transmitter sites within 50 miles of the transmitter site proposed in the Cross modification application: (1) Station WHR831 of Community Educational Service/Dallas, Inc., (2) Station WHR830 of Dallas County Community College District, (3) Station KWU29 of Association for Higher Education, (4) Station WHR836 of Education Service Center Region 10, and (5) Station WHR718 of Education Service Center Region 10. With its modification application, Cross filed interference analyses for each of these five ITFS stations. In response to a staff request for information, Cross submitted, on August 31, 1993, additional interference calculations for ITFS receive sites identified by ITFS licensees and construction permittees.

3. *Petition.* Cross states in its reconsideration petition that "the proposed modifications to MDS station WNTD967 satisfy the Commission's interference protection requirements." Petition at 1.

> Subsequent discussions with the Commission staff indicate that this action was inadvertent and that Cross Country's engineering analysis does, in fact, make the requisite showing of non-interference as required by the Commission's rules. Attached is a supplemental engineering analysis ... that further clarifies that the proposed modifications to WNTD967 satisfy the Commission's rules.

Petition at 2.[1] "The grant of Cross Country's application will be in the public interest as it will allow the colocation of facilities and also allow the MDS H-3 Channel in Dallas to be used for the provision of wireless cable service." Petition at 3.

4. *Discussion.* "During ITFS operations, *registered* receive sites are protected from harmful interference." *Amendment of Parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands,* 6 FCC Rcd 6764, 6765 n.9 (1991) (emphasis added). The ITFS computer data base listing was used to ascertain which ITFS receive sites were registered and which were merely proposed for registration. Unfortunately, the ITFS data base contains both ITFS receive sites registered and those receive sites merely proposed for registration, without distinguishing the two types. Upon subsequent review of the requisite ITFS hardcopy files, it was determined that Cross filed initially with its modification application interference analyses for each of the ITFS receive sites registered on the day the modification application was filed. Thus, the analyses met the standards of Section 21.902(i). Consequently, we find that Cross made sufficient demonstration of a lack of the potential for harmful interference to authorized ITFS stations, pursuant to Section 21.902(i).

5. *Conclusion and Ordering Clause.* Having carefully considered all of the arguments and evidence presented, we find that reconsideration of our return action is warranted and reinstatement of the application is justified. Accordingly, IT IS ORDERED that the petition for reconsideration and reinstatement filed by Cross Country Telecommunications, Inc. regarding the above-referenced MDS modification application IS GRANTED and the above-referenced Cross modification application is hereby reinstated *nunc pro tunc*. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

[1] With its reconsideration petition, Cross submitted new interference analyses for ITFS stations WHR830 and WHR831.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
the Renewal Application
of Tribune Regional Programming, Inc. File No. 59092-CM-R-91

For Authority to Operate
a Multipoint Distribution
Service Station WOF49 on Channel 1
at Chicago, Illinois

MEMORANDUM OPINION AND ORDER

Adopted: April 20, 1994; Released: April 29, 1994

By the Chief, Domestic Facilities Division:

1. *Introduction.* The above-referenced renewal application of Tribune Regional Programming, Inc. (Tribune) to operate a Multipoint Distribution Service (MDS) station on Channel 1 at Chicago, Illinois was filed on April 24, 1991, eight (8) days prior to the expiration of its license term, May 1, 1991. Danjon, Inc. filed a Petition to Dismiss Application on July 17, 1991, arguing that the renewal application of Tribune was cut-off pursuant to 47 C.F.R. Sec. 21.914 by the filing of Danjon's initial application for a new station for Channel 1 at Chicago, Illinois on March 4, 1991 (File No. 58325-CM-P-91). Applicant filed an opposition. Danjon filed a reply.

2. *Petition.* Danjon argues that 47 C.F.R. Sec. 21.914 requires that this renewal application must be returned as unacceptable for filing and dismissed as cut-off because it was not filed on the same calendar day as Danjon's initial application. "It should also be noted that the language of Section 21.914 ... does not contain any exception for license renewal applications, nor does the Commission's [rulemaking order], which adopted Section 21.914, evidence any intent by the Commission to make the rule inapplicable to any MDS renewal applications." Petition at 4-5. It is further argued that the filing of the renewal application on the 60th day prior to the May 1, 1991 expiration date of the license would have avoided the risk of being cut-off, pursuant to Sections 21.11(c) and 21.914, by the filing of Danjon's application. Petition at 5-6. Danjon also requests that the Commission reverse the public notice statement that Danjon's initial application for a new station appears to be mutually-exclusive with this renewal application. Petition at 6.

3. *Opposition.* Characterizing Danjon's argument as "both incorrect and implausible," Tribune argues in its opposition that Section 21.11(c) establishes a thirty-day filing period for renewal applications, and that this period was not shortened by the Commission's adoption of Section 21.914. Tribune also asserts that the acceptance of Danjon's argument would require a determination that the Commission acted in an arbitrary and capricious fashion in adopting Section 21.914 "in a manner which could cause the forfeiture of existing licenses and the suspension of existing programming: (1) without explicitly announcing its intention to do so; (2) without articulating the rationale behind the alleged change in its rules, and (3) without so much as referencing (if not actually modifying) the text of a specifically relevant rule section." *Id.* at 3. "Section 21.914 does not mention MDS renewal filings or Section 21.11[c] because the new rule was intended to govern competing applications only among *initial applicants* for *new MDS facilities* and this has nothing to do with renewal applications." Opposition at 4 (emphasis in original). "[C]ontrary to Danjon's presumption, the Commission never intended to conduct comparative MDS renewal proceedings as it does for broadcast licensees." *Id.* at 2, n.3.

4. *Reply.* Danjon asserts that its petition to dismiss was filed in a timely manner and the deadline for filing a petition to deny contained in Section 21.30 is inapplicable to Danjon's pleading because it was not intended to serve as a petition to deny, but "merely address[es] the issue of whether the Applicant['s] respective application... [was] defective and untimely." Reply at 6. Partially based upon the "plain meaning rule," Danjon argues in its reply that "there is no merit to the Applicant['s] speculations that the Commission must have intended to exclude MDS renewal applications from the ambit of the clear and unmistakable language of Section 21.914..." Reply at 9. According to Danjon, the Commission's adoption of Section 21.914 was fair because the rule change was "well known to the industry" and "all existing MDS licensees are presumed to be familiar with the Commission's Rules, including Section 21.914 and Section 21.11(c)." Reply at 10.

> Thus, all MDS licensees have been on notice since the adoption of Section 21.914 ..., that, although it was possible to file an MDS license renewal application between March 4, 1991 and April 1, 1991, nonetheless, if another competing application were filed prior to the filing of the renewal application, that first-filed application would establish the one-day filing period for the frequency in question.

Reply at 10. Danjon cites a number of cases from the Court of Appeals for the D.C. Circuit and the U.S. Supreme Court to support its assertion that "the Commission is obligated to accept applications, such as those of Danjon, seeking authorization for a new MDS station which are, or which may become, mutually exclusive with any application for renewal of license of an incumbent MDS licensee" because the renewal licensee has no property right in the frequency. Reply at 7-8. "There is not merit to Tribune's suggestion that the Commission is not legally obligated to allow for comparative consideration of applications for new MDS facilities which are mutually-exclusive with MDS renewal applications." Reply at 6. "Finally, it must be borne in mind that Danjon was the first-filed applicant in [this case]; hence, Danjon cannot be properly viewed as an 'overfiler'." Reply at 12.

5. *Discussion.* We agree with Danjon that the significant issue here is the filing of an MDS application after the

relevant cut-off date.[1] Unfortunately, Danjon focuses on the wrong cut-off date. Pursuant to both Sections 21.31 and 21.914, the first application to be filed for a channel group in a given geographic area triggers consideration of the cut-off rule, whether the same calendar day period of Section 21.914[2] or the 30 to 60 day period of Section 21.31(b)(2).[3]

6. Contrary to Danjon's assertion, its application was not the first application to be filed for a Channel 1 MDS station at Chicago. The first application to be filed for Channel 1 at Chicago was filed by Chicago Communication Service, Inc. on February 2, 1974 (File No. 4243-CM-P-71). This application appeared on public notice on February 16, 1971, thereby triggering the 30 to 60 day cut-off period of Section 21.31(b)(2). In 1991, it was too late for Danjon's application to be comparatively considered with this MDS application filed in 1971 for Channel 1 at Chicago.[4]

7. Further, an authorized station is not stripped of its cut-off protection, pursuant to Section 21.31, by the grant of its application. The cut-off protection continues as long as the station is authorized. The Common Carrier Bureau previously addressed this issue with regard to an MDS Channel 2 application at Albany, New York, finding that the application for a new station was cut-off in relationship to any licensed station.

> The periods for filing competing applications for the frequencies assigned to each of the licensed ... facilities had long since passed when [the applicant] tendered his amendment. Because [the applicant] had met none of the filing deadlines, his application, vis-a-vis all of the [licensed] facilities, was not acceptable for filing....

Ernest Enax, Jr. and George W. Bott, 5 FCC Rcd 5835, 5836 (Comm. Car. Bur. 1990). Danjon's assertion that the filing of its initial application for a new station triggers the cut-off rule is incorrect. By proposing the same set of coordinates for its proposed MDS station as was authorized for MDS station WOF49, Danjon filed a new station application which is mutually-exclusive with an authorized station due to the potential for harmful electrical interference to station WOF49, pursuant to Section 21.31(a). *See e.g., Microband Corp. of America*, 41 FCC 2d 184, 186 (1973) ("[I]t appears that [Rust Craft's] application would be mutually exclusive with Microband's application because of electrical interference. Accordingly, Rust Craft's ... application [is] returned as unacceptable for filing for failure to file within the time prescribed by the cut-off rule."). Therefore, Danjon filed its application *after* the cut-off date for licensed station WOF49. Consequently, Danjon's application is cut-off from comparative consideration with licensed MDS station WOF49.

8. With regard to Danjon's request that we reverse the public notice announcement of mutual exclusivity, upon further review, we determine that the referenced Danjon application is mutually exclusive with station WOF49, because there would be harmful electrical interference between the two stations if Danjon's application was granted. However, Danjon's application is not entitled to comparative consideration with the referenced renewal application, because Danjon's application was filed after the relevant cut-off date. Pursuant to the terms of Section 21.914, Danjon's application cannot trigger the cut-off period because it was unacceptable for filing. Thus, the above-referenced renewal application of Tribune was not cut-off.

9. *Conclusion and Ordering Clause.* The dispositive facts in this proceeding are undisputed. We find Danjon's evidence insufficient to establish that the above-referenced renewal application was cut-off and must be dismissed.[5]

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[1] We disagree with Danjon's claim that because it labeled its pleading as a petition to dismiss, instead of a petition to deny, Section 21.30 is inapplicable and there was no deadline for filing its pleading in opposition to the referenced renewal application. Section 21.30 is titled "Opposition to applications." The rule section clearly states that petitions to deny and "petitions for other forms of relief" must comply with its provisions. However, Section 21.30 requires the filing of the petition to deny within 30 days of the public notice of the application's acceptance for filing. There has been no such public notice to date, and thus, Danjon's petition to deny is not untimely filed in this instance. With regard to the request in Danjon's pleading that the public notice announcement be reversed, this request will be considered a petition for reconsideration of that announcement of mutual exclusivity.

[2] Section 21.914 provides, *inter alia:*

> Notwithstanding the provisions of Sec. 21.31(b)(2)(i) and (ii) of this part, to be entitled to ... comparative consideration with one or more conflicting applications, an application for frequencies at 2150-2162 MHz ... must be received in a condition acceptable for filing on the same calendar day as the first of the conflicting applications is received by the Commission in a condition acceptable for filing.

[3] Section 21.31(b) provides, *inter alia:*

> An application will be entitled to ... comparative consideration with one or more conflicting applications only if:
>
> (1) The application is mutually exclusive with the other application; and The application is received by the Commission in a condition acceptable for filing by whichever "cut-off" date is earlier:
>
> (i) Sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or
>
> (ii) One (1) business day preceding the day on which the Commission takes final action on the previously filed application (should the Commission act upon such application in the interval between thirty (30) and sixty (60) days after the date of its public notice).

[4] Commission records reflect that this application was the first one filed for a Multipoint Distribution Service station, and that no mutually-exclusive applications were filed for Channel 1 at Chicago. The application of Chicago Communication Service, Inc. was granted September 26, 1972. A transfer of control application, File No. 50122-CM-TC-(4)-82, was granted February 10, 1982 from Chicago Communication Service, Inc. to Tymshare, Inc. A transfer of control application, File No. 50081-CM/CF-TC-(2)-84, was granted March 19, 1984 from Tymshare, Inc. to Microband Corporation of America. On September 4, 1990, an assignment application, File No. 52319-CM-AL-(2)-90, was granted from Microband Corporation of America to Tribune Regional Programming, Inc.

[5] *See, e.g., Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1536, 1573 (D.C. Cir. 1988)(hereinafter cited as *Astroline); Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501 (D.C. Cir.

Having carefully considered all the pleadings and the evidence submitted, we find that the allegations raised by Danjon, when read in conjunction with the remainder of the record, are insufficient to raise a substantial or material question of fact. Accordingly, IT IS ORDERED that the Petition to Deny filed by Danjon, Inc. IS HEREBY DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4, 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

1988)(hereinafter cited as *Beaumont); Gencom, Inc. v. FCC*, 832 F.2d 171 (D.C. Cir. 1987); *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 394, 397 (D.C. Cir. 1985); *see also, Midland Educational Broadcasting Foundation*, 4 FCC Rcd 5207 (Audio Serv. Div. 1989); *Sherry Rullman and Edna Cornaggia*, 2 FCC Rcd 2011 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Renewal Application

of Chicago MDS Company File No. 57962-CM-R-91

For Authority to Operate
a Multipoint Distribution
Service Station WHT562 on Channel 2
at Chicago, Illinois

MEMORANDUM OPINION AND ORDER

Adopted: April 20, 1994; Released: April 29, 1994

By the Chief, Domestic Facilities Division:

1. *Introduction.* The above-referenced renewal application of Chicago MDS Company (Applicant) to operate a Multipoint Distribution Service (MDS) station on Channel 2 at Chicago, Illinois was filed on April 1, 1991, thirty days prior to the expiration of its license term, May 1, 1991, as required by 47 C.F.R. Sec. 21.11(c). Danjon, Inc. filed a Petition to Dismiss Application on July 17, 1991, arguing that the renewal application of Chicago MDS was cut-off pursuant to 47 C.F.R. Sec. 21.914 by the filing of Danjon's initial application for a new station for Channel 2 at Chicago, Illinois on March 4, 1991 (File No. 58326-CM-P-91). Applicant filed an opposition. Danjon filed a reply.

2. *Petition.* Danjon argues that 47 C.F.R. Sec. 21.914 requires that this renewal application must be returned as unacceptable for filing and dismissed as cut-off because it was not filed on the same calendar day as Danjon's initial application. "It should also be noted that the language of Section 21.914 ... does not contain any exception for license renewal applications, nor does the Commission's [rulemaking order], which adopted Section 21.914, evidence any intent by the Commission to make the rule inapplicable to any MDS renewal applications." Petition at 4. It is further argued that the filing of the renewal application on the 60th day prior to the May 1, 1991 expiration date of the license would have avoided the risk of being cut-off, pursuant to Sections 21.11(c) and 21.914, by the filing of Danjon's application. Danjon also requests that the Commission reverse the public notice statement that Danjon's initial application for a new station appears to be mutually-exclusive with this renewal application.

3. *Opposition.* Chicago MDS Company argues in its opposition that Danjon's petition was untimely filed because it was filed on July 12, 1991, missing the thirty-day deadline for filing a petition to deny prescribed at 47 C.F.R. Sec. 21.30(a).[1] The renewal applicant also argues that Section 21.914 does not apply to renewal applications because Section 21.11(c) exclusively governs the filing of renewal applications. Opposition at 4-5. "The Commission's *Wireless Cable Order* did not reference, much less, modify this rule in any respect. Section 21.914 as well makes no mention of renewal applications." *Id.* at 5. "[T]here is no evidence to suggest that the Commission intended the one-day filing window to apply to the renewal process. The one-day filing rule was adopted by the Commission as a means to stem the flood of speculative applications flowing from the application mills." *Id.* at 6. "If the Commission had intended to modify Section 21.11(c), it would have done so in a way that provided fair and adequate notice to those licensees affected. Such notice would have had to include specific definition of those circumstances where a timely-filed renewal application might nonetheless be cut-off by a competing applicant." *Id.* at 6-7. "Danjon's advances no substantive challenge to the captioned renewal application and makes no claim that Chicago MDS is unworthy to be a Commission licensee." *Id.* at 8. "The opposition claims that Danjon's application merely copied "the facility characteristics currently in use by Chicago MDS." *Id.* at 7. It is further asserted that Commission "records indicate that Danjon [is] a corporation whose sole shareholder is a Washington, D.C. attorney." *Id.* at 7, n.12. "Chicago MDS has invested more than $75,000 in its facility to establish a fully operational station serving over 8,5000 customers, thereby substantially using its spectrum for its intended purpose." *Id.* at 9.

4. *Reply.* Danjon asserts that its petition to dismiss was filed in a timely manner and the deadline for filing a petition to deny contained in Section 21.30 is inapplicable to Danjon's pleading because it was not intended to serve as a petition to deny, but "merely address[es] the issue of whether the Applicant['s] respective application... [was] defective and untimely." Reply at 6. Partially based upon the "plain meaning rule," Danjon argues in its reply that "there is no merit to the Applicant['s] speculations that the Commission must have intended to exclude MDS renewal applications from the ambit of the clear and unmistakable language of Section 21.914..." Reply at 9. According to Danjon, the Commission's adoption of Section 21.914 was fair because the rule change was "well known to the industry" and "all existing MDS licensees are presumed to be familiar with the Commission's Rules, including Section 21.914 and Section 21.11(c)." Reply at 10.

> Thus, all MDS licensees have been on notice since the adoption of Section 21.914 ..., that, although it was possible to file an MDS license renewal application between March 4, 1991 and April 1, 1991, nonetheless, if another competing application were filed prior to the filing of the renewal application, that first-filed application would establish the one-day filing period for the frequency in question.

Reply at 10. Danjon cites a number of cases from the Court of Appeals for the D.C. Circuit and the U.S. Supreme Court to support its assertion that "the Commission is obligated to accept applications, such as those of Danjon, seeking authorization for a new MDS station which are, or which may become, mutually exclusive with any application for renewal of license of an incumbent MDS licensee" because the renewal licensee has no property right in the

[1] The renewal application was filed on April 1, 1991, and appeared on public notice as accepted for filing on April 24, 1991. According to the applicant, therefore, a petition to deny was required to be filed on or before May 24, 1991. Danjon submitted its pleading on July 12, 1991, 49 days after May 24, 1991.

frequency. Reply at 7-8. "Finally, it must be borne in mind that Danjon was the first-filed applicant in [this case]; hence, Danjon cannot be properly viewed as an 'overfiler'." Reply at 12.

5. *Discussion.* We agree with Danjon that the significant issue here is the filing of an MDS application after the relevant cut-off date.[2] Unfortunately, Danjon focuses on the wrong cut-off date. Pursuant to both Sections 21.31 and 21.914, the first application to be filed for a channel group in a given geographic area triggers consideration of the cut-off rule, whether the same calendar day period of Section 21.914[3] or the 30 to 60 day period of Section 21.31(b)(2).[4]

6. Contrary to Danjon's assertion, its application was not the first application to be filed for a Channel 2 MDS station at Chicago. The first application to be filed for Channel 2 at New York City was filed by Digital Paging Systems, Inc. (Digital) on February 26, 1974 (File No. 50035-CM-P-74). This application appeared on public notice on March 4, 1974, thereby triggering the 30 to 60 day cut-off period of Section 21.31(b)(2). In 1991, it was too late for Danjon's application to be comparatively considered with four (4) MDS applications filed in 1974 for Channel 2 at Chicago.[5]

7. Further, an authorized station is not stripped of its cut-off protection, pursuant to Section 21.31, by the grant of its application. The cut-off protection continues as long as the station is authorized. The Common Carrier Bureau previously addressed this issue with regard to an MDS Channel 2 application at Albany, New York, finding that the application for a new station was cut-off in relationship to any licensed station.

> The periods for filing competing applications for the frequencies assigned to each of the licensed ... facilities had long since passed when [the applicant] tendered his amendment. Because [the applicant] had met none of the filing deadlines, his application, vis-a-vis all of the [licensed] facilities, was not acceptable for filing....

Ernest Enax, Jr. and George W. Bott, 5 FCC Rcd 5835, 5836 (Comm. Car. Bur. 1990). Danjon's assertion that the filing of its initial application for a new station triggers the cut-off rule is incorrect. By proposing the same set of coordinates for its proposed MDS station as was authorized for MDS station WHT562, Danjon filed a new station application which is mutually-exclusive with an authorized station due to the potential for harmful electrical interference to station WHT562, pursuant to Section 21.31(a). *See e.g., Microband Corp. of America*, 41 FCC 2d 184, 186 (1973) ("[I]t appears that [Rust Craft's] application would be mutually exclusive with Microband's application because of electrical interference. Accordingly, Rust Craft's ... application [is] returned as unacceptable for filing for failure to file within the time prescribed by the cut-off rule."). Therefore, Danjon filed its application *after* the cut-off date for licensed station WHT562. Consequently, Danjon's application is cut-off from comparative consideration with licensed MDS station WHT562.

8. With regard to Danjon's request that we reverse the public notice announcement of mutual exclusivity, upon further review, we determine that the referenced Danjon application is mutually exclusive with station WHT562, because there would be harmful electrical interference between the two stations if Danjon's application was granted. However, Danjon's application is not entitled to comparative consideration with the referenced renewal application,

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[2] We disagree with Danjon's claim that because it labeled its pleading as a petition to dismiss, instead of a petition to deny, Section 21.30 is inapplicable and there was no deadline for filing its pleading in opposition to the referenced renewal application. Section 21.30 is titled "Opposition to applications." The rule section clearly states that petitions to deny and "petitions for other forms of relief" must comply with its provisions. Admittedly, the Danjon pleading was not filed within the thirty day period stipulated by Section 21.30. Therefore, Danjon filed its opposition to the renewal application late. Thus, pursuant to Section 21.30(b), Danjon's pleading will be classified as an informal objection, and need not be discussed in this decision, pursuant to Section 21.30(c), to the extent that it opposes the renewal application and seeks dismissal and return of the renewal application. However, Danjon's pleading was filed within 30 days of the release of the public notice announcement that the Danjon application and the renewal application appear to be mutually exclusive. Therefore, with regard to the request in Danjon's pleading that the public notice announcement be reversed, this request will be considered a petition for reconsideration of that announcement of mutual exclusivity.

[3] Section 21.914 provides, *inter alia:*

> Notwithstanding the provisions of Sec. 21.31(b)(2)(i) and (ii) of this part, to be entitled to ... comparative consideration with one or more conflicting applications, an application for frequencies at 2150-2162 MHz ... must be received in a condition acceptable for filing on the same calendar day as the first of the conflicting applications is received by the Commission in a condition acceptable for filing.

[4] Section 21.31(b) provides, *inter alia:*

> An application will be entitled to ... comparative consideration with one or more conflicting applications only if:
>
> (1) The application is mutually exclusive with the other application; and
>
> The application is received by the Commission in a condition acceptable for filing by whichever "cut-off" date is earlier:
>
> (i) Sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or
>
> (ii) One (1) business day preceding the day on which the Commission takes final action on the previously filed application (should the Commission act upon such application in the interval between thirty (30) and sixty (60) days after the date of its public notice).

[5] The Joint Request for Issuance of Construction Permit, filed September 15, 1983, stated that there were only four such mutually exclusive MDS applications: the referenced Digital application, Private Networks, Inc. (File No. 50126-CM-P-74), Cross Country Networks, Inc. (File No. 50138-CM-P-74), and Rockford Communications Co. (File No. 50107-CM-P-74). The joint request included a settlement agreement of these four applicants, and requested that the Digital application be amended to reflect the joint venture of the four applicants, the name of the applicant was changed from Digital to Chicago MDS Company, three applications be dismissed, and the Digital application be granted, as amended. The application of Chicago MDS Company was granted October 26, 1983.

because Danjon's application was filed after the relevant cut-off date. Pursuant to the terms of Section 21.914, Danjon's application cannot trigger the cut-off period because it was unacceptable for filing. Thus, the above-referenced renewal application of Chicago MDS Company was not cut-off.

9. *Conclusion and Ordering Clause.* The dispositive facts in this proceeding are undisputed. We find Danjon's evidence insufficient to establish that the above-referenced renewal application was cut-off and must be dismissed.[6] Having carefully considered all the pleadings and the evidence submitted, we find that the allegations raised by Danjon, when read in conjunction with the remainder of the record, are insufficient to raise a substantial or material question of fact. Accordingly, IT IS ORDERED that the Petition to Deny filed by Danjon, Inc. IS HEREBY DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4, 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

[6] *See, e.g., Astroline Communications Co. v. FCC,* 857 F.2d 1556, 1536, 1573 (D.C. Cir. 1988)(hereinafter cited as *Astroline); Beaumont Branch of the NAACP v. FCC,* 854 F.2d 501 (D.C. Cir. 1988)(hereinafter cited as *Beaumont); Gencom, Inc. v. FCC,* 832 F.2d 171 (D.C. Cir. 1987); *Citizens for Jazz on WRVR, Inc. v. FCC,* 775 F.2d 392, 394, 397 (D.C. Cir. 1985); *see also, Midland Educational Broadcasting Foundation,* 4 FCC Rcd 5207 (Audio Serv. Div. 1989); *Sherry Rullman and Edna Cornaggia,* 2 FCC Rcd 2011 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-277

In the Matter and Applications of

WALTER S. KELLEY, TRUSTEE
WFXL(TV)
File No. BALCT-931216KM

NEWSOUTH BROADCASTING, INC.
WFXL(TV)
Albany, Georgia
File No. BTCCT-910308KE
(PREVIOUSLY DISMISSED)

Order to Show Cause Why the License of WFXL(TV) Should Not be Revoked; Application for Assignment of License to SGA Associates, Inc.; Application for Transfer of Control to NewSouth Broadcasting, Inc., Debtor-in-Possession

TIMOTHY S. BRUMLIK
Permittee of Low Power Television Station W07BZ, Orlando, Florida
File Nos. BLTVL-891107JE
BAPTVL-900105IA
BAPTVL-910607IB
(PREVIOUSLY DISMISSED)

Order to Show Cause Why the Permit of W07BZ Should Not Be Revoked; Application for License to Cover Construction Permit; Application for Assignment of Construction Permit to Robert Sandusky; and Application for Assignment of Construction Permit to Timothy S. Brumlik, Debtor-in-Possession

NEWSOUTH MEDIA CORPORATION
Permittee of Low Power Television Station W12CD, Altamonte Springs, Florida
File Nos. BMPTVL-900129IA
BAPTVL-900105IC
(PREVIOUSLY DISMISSED)

Order to Show Cause Why the Permit of W12CD Should Not Be Revoked; Application for Modification of Construction Permit; and Application for Assignment of Construction Permit to Televista, Inc.

NEWSOUTH BROADCASTING, INC.
Permittee Of Low Power Television Station W13BO, Valdosta, Georgia
File Nos. BMPTVL-900125IA
BMPTVL-891208R4
BLTVL-900125IB
BAPTVL-900703IE
(PREVIOUSLY DISMISSED)

Order to Show Cause Why the Permit of W13BO Should Not Be Revoked; Application to Replace Expired Construction Permit; Application for Modification of Construction Permit; and Application for Assignment of Construction Permit to General Management Consultants, Inc.

TIMOTHY S. BRUMLIK
Permittee of Low Power Television Station W12CC, Cocoa, Florida
File Nos. BAPTVL-900105IB
BMPTVL-910301JG
BAPTVL-910607IC
(PREVIOUSLY DISMISSED)

Order to Show Cause Why the Permit of W12CC Should Not Be Revoked; Application for Assignment of Construction Permit to Robert Sandusky; Application for Extension of Construction Permit; and Application for Assignment of Construction Permit to Timothy S. Brumlik, Debtor-in-Possession

NEWSOUTH BROADCASTING, INC.
Lumber City, Georgia
File No. BPTVL-870702TX
(PREVIOUSLY DISMISSED)

For a Construction Permit for a New Low Power Television Station

MEMORANDUM OPINION AND ORDER

Adopted: April 22, 1994; Released: April 29, 1994

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority,[1] has before it (1) a Second Petition for Extraordinary Relief in the above-captioned proceeding filed on December 15, 1993, by Walter W. Kelley, Trustee, licensee of Television Station WFXL(TV), Albany, Georgia and SGA Associates, Inc. ("the Applicants"); (2) an Application for Assignment of the License of WFXL(TV) from Walter W. Kelley, Trustee, to SGA Associates, Inc. (File No. BALCT-931216KM); (3) a Petition to Deny the assignment application filed on January 28, 1994, by Manuel Cantu ("Cantu"); (4) an Opposition to Petition to Deny filed on February 16, 1994, by the Applicants; (5) a Reply filed on March 18, 1994, by Cantu; and (6) related pleadings. The Applicants request approval of the assignment of WFXL(TV) to SGA Associates, Inc., pursuant to the policy established by the Commission in *Second Thursday Corp.*, 22 FCC 2d 515, *recon. granted*, 25 FCC 2d 112 (1970). For the reasons which follow, we will grant the relief requested by the Applicants.

BACKGROUND

2. On August 23, 1991, the Commission released an *Order to Show Cause and Hearing Designation Order*, 6 FCC Rcd 5047 (1991), as a result of criminal activity by NewSouth Broadcasting, Inc.'s principal, Timothy S. Brumlik. Subsequently, the Commission granted a Petition for Extraordinary Relief and approved a proposed sale of WFXL(TV) to the Bonita Corporation and Cantu. *NewSouth Broadcasting, Inc.* In so doing, the Commission found that WFXL(TV) qualified for *Second Thursday* treatment.[2] *NewSouth Broadcasting, Inc.* also dismissed the above-captioned applications at the applicant's request.

3. The sales agreement was later cancelled by the U.S. Bankruptcy Court for the Middle District of Georgia, Albany Division, and the sale was not consummated. The Bankruptcy Court also appointed Walter W. Kelley as Trustee, and, on September 22, 1993, the Commission approved the *pro forma* assignment of the license to Mr. Kelley. The Bankruptcy Court approved the sale to SGA Associates, and the Applicants have now filed their application for Commission consent.

THE PETITION TO DENY

4. In challenging an application pursuant to Section 309(d) of the Communications Act of 1934, as amended, a petitioner must demonstrate party in interest status. Cantu states that he is a resident of Albany, Georgia, and a viewer of WFXL(TV). In addition, Cantu indicates that he was an unsuccessful bidder at an auction to sell the assets of the station. We find that Cantu has standing to file his petition.

5. Section 309(d)(1) of the Communications Act requires a two-step analysis for judging the sufficiency of a petition to deny an application. We must first determine whether the petition and its supporting affidavits contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest. These allegations of fact, except for those of which official notice may be taken, must be supported by the affidavit of a person with knowledge of the facts alleged. 47 U.S.C. 309(d)(1). In making a *prima facie* determination, we assume that the specific facts set forth by the complaining party are true without reference to contrary evidence, and we are limited to consideration of the petition and its supporting affidavits during this initial inquiry. *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988). Allegations within these documents that consist "of ultimate, conclusionary facts or more general affidavits . . . are not sufficient." *Gencom, Inc. v. FCC*, 832 F.2d 171, n.11 (D.C. Cir. 1987).

6. If we determine that the petition satisfies the threshold standard, the inquiry proceeds to a second phase. Having found that the petitioner has alleged a *prima facie* inconsistency with the public interest, the Commission must then determine whether, on the basis of the application, the pleadings filed, or other matters which it may officially notice, a substantial and material questions of fact is presented. 47 U.S.C. 309(d)(2). Should the Commission conclude that such a question of fact has been raised, or if it cannot, for any reason, find that grant of the application would be consistent with the public interest, it must conduct a hearing in accordance with 47 U.S.C. 309(e). For the reasons which follow, we find that an evidentiary hearing is not warranted in the instant case.

7. As Cantu correctly points out in his petition, SGA Associates, Inc. has agreed to pay the above-captioned Trustee $1,900,000 for the assets of WFXL(TV). The Trustee has entered into an agreement with Summit Bank of Indianapolis ("the Bank") whereby the Bank will accept $925,000 in full settlement of its claims as a secured creditor. Two other entities claim to be secured creditors, according to Cantu: Timothy Brumlik, and NewSouth Group, Inc., owned by Brumlik. Brumlik's claim is for $158,851.97. NewSouth Group, Inc.'s claim is for $126,568.05. Thus, Cantu argues, Brumlik stands to receive a substantial amount as an individual creditor and as the owner of another creditor. It follows, according to Cantu, that the alleged wrongdoer would benefit from the transaction to such an extent that the transaction does not meet the requirements of the *Second Thursday* exception.

8. In opposition, the applicants state that Timothy Brumlik is bankrupt and that, on February 7, 1994, which is after Cantu's petition was filed, Brumlik's bankruptcy proceeding was converted to a Chapter 7 proceeding. The applicants append declarations by the above-captioned Trustee; by Marika Lancaster, the Justice Department attorney who represented the United States in Brumlik's bankruptcy proceeding with respect to tax liabilities; and by James Orr, Trustee in the Brumlik bankruptcy. All agree that Brumlik would not directly benefit from the sale of WFXL(TV).

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[1] *See NewSouth Broadcasting, Inc.*, 8 FCC Rcd 1272, 1273 (1993).

[2] In *Second Thursday* the Commission established a policy of permitting bankrupt licensees designated for hearing to sell the station if the proceeds will go solely to the benefit of innocent creditors.

9. The Trustee declares that he intends to object to the claims of Brumlik and NewSouth Group, in which case no distribution will be made to them. The court has already determined that, except for the Bank, all creditors of the station will be treated as unsecured creditors. Thus, should the court rule against the Trustee and allow the claims by Brumlik and NewSouth Group, those claims would be added to approximately $700,000 in pre-petition general unsecured claims, $300,000 in pre-petition tax claims, and an additional, unsecured claim by the Bank for $1,000,000. Accordingly, even if their claims were allowed in full, Brumlik and NewSouth Group would be entitled to a pro rata share estimated not to exceed $36,000. This, contends the Trustee, is a *de minimis* benefit, when compared with a distribution to other creditors of about $1,864,000.

10. The Trustee also points out that any benefit to Brumlik from the instant transaction will go into Brumlik's bankruptcy estate. According to the Trustee, the disclosure statement in the Brumlik proceeding indicates total assets of $10,195,645 and liabilities of approximately $7,000,000. However, the single most valuable asset consists of notes valued at $5,350,000. The Trustee indicates that, in a Chapter 7 proceeding, the trustee is likely to receive no more than the liquidation value of the notes. There is a bid to acquire the notes for $500,000. The Trustee also points out that the listed liabilities do not include administrative costs and a possible reinstatement of a tax claim. As a result of these facts, the Trustee concludes that there is little likelihood that Brumlik will directly benefit from any distribution. James Orr declares that, in his opinion, there will not be enough assets in the Brumlik bankruptcy case for there to be any distribution whatsoever to Brumlik and/or his wife. Marika Lancaster's declaration agrees with that view, and adds that a grant of Cantu's petition to deny the above-captioned application would be detrimental to the fiscal interests of the United States, a principal priority creditor in Brumlik's individual bankruptcy.

11. In reply, Cantu insists that the Commission has no basis for concluding that the proceeds from the proposed assignment will go solely to the trustee for Brumlik's bankrupt estate for eventual distribution to creditors. Cantu claims that statements by the Trustee in the applicants' opposition lack specificity, and contain conditional language and speculation as to what may happen at some future time. With respect to the statement of Marika Lancaster, Cantu argues that Ms. Lancaster cannot be considered a disinterested party. Cantu terms the statement by James Orr "so vague as to be worthless." In conclusion, Cantu states that the applicants do not know at this time the extent to which Brumlik will directly benefit from the proposed assignment. Moreover, Cantu indicates that neither the applicants nor any person providing supportive statements can know to what extent Brumlik's liabilities will exceed his assets. Thus, according to Cantu, it is impossible to rule out the fact that Brumlik may receive a direct benefit.

12. In a Supplement to Reply[3] filed March 31, 1994, Cantu states that the United States, by its attorney, Marika Lancaster, filed an Amended Statement of Issues on Appeal on March 15, 1994. Pursuant to the Amended Statement, the United States is amending its appeal to eliminate certain issues. This, according to Cantu, will further reduce Brumlik's tax liability "by a yet unknown amount." However, the applicants attach the supplemental declaration of Marika Lancaster to their comments, filed April 8, 1994. Ms. Lancaster states that the United States' claim amounts to $2,711,100.07, including interest, even allowing for the decision not to appeal certain adverse rulings. Ms. Lancaster also declares that she has not been apprised of any filed objection with respect to the government's request for payment of postpetition administrative federal tax liabilities in the amount of $305,913.46, plus interest. Finally, Ms. Lancaster restates her view that, even with the receipt by the Brumlik bankruptcy estate of funds from the subject sale, no funds would be available for distribution to Brumlik or his wife.

DISCUSSION

13. We will grant the Applicants' Petition for Extraordinary Relief and allow the assignment of WFXL(TV) to SGA Associates, Inc. In *NewSouth Broadcasting, Inc.*, the Commission determined that WFXL(TV) was eligible for *Second Thursday* treatment. The station is still in bankruptcy. The only obstacle to approval of the Applicants' petition is the possibility, raised by Cantu, that Brumlik, the wrongdoer, could impermissibly benefit from the proposed sale. We are of the view that the remote likelihood of any benefit to Brumlik would be outweighed by equitable considerations.

14. According to the applicants, the most that Brumlik is entitled to receive as a creditor of the station is $36,000. Cantu has not shown that this estimate is inaccurate in any material respect and we have no reason to question the Trustee's opinion in this regard. Moreover, we believe that this benefit is *de minimis*, in view of the equities in favor of innocent creditors. In *Shell Broadcasting, Inc.*, 38 FCC 2d 929 933 (1973), the Commission suggested that a direct benefit of about $30,000 would be disallowed because, at about 14%, it would be too large a proportion of the purchase price. An indirect benefit of 8% was permitted. Here, the benefit, if it occurs at all, would amount to, at most, about 2%.

15. Moreover, we are convinced that the facts relative to Brumlik's individual Chapter 7 bankruptcy insure that he is not likely to receive a direct benefit from the proposed transaction. Of course, as Cantu points out, we cannot determine at this time the exact distribution of the proceeds. That, however, is the case in any assignment pursuant to the *Second Thursday* policy. The finding which we are required to make is whether the likelihood that the wrongdoer will benefit to a significant extent outweighs equitable considerations in favor of innocent creditors. By necessity, where, as here, the distribution of the proceeds is dependent upon rulings in two complex bankruptcy actions, we must rely upon the estimates and opinions of persons intimately acquainted with the bankruptcy proceedings.

16. Cantu appends the declaration of Burton L. Bruggeman, Brumlik's attorney, asserting, *inter alia*, that Bruggeman expects Brumlik's claims against WFXL(TV) to be found valid. However, the Trustee's declaration, submit-

[3] Such a pleading is not authorized by the Commission's Rules. In view of the serious allegation, we have considered the facts set forth in the Supplement to Reply.

ted with the applicants' opposition, shows that, even if Brumlik's claims were allowed, the *pro rata* distribution to Brumlik would still be *de minimis*, because of the existence of other claims. Thus, even if Brumlik were not bankrupt, we would consider the largest direct benefit which Brumlik is likely to receive to be *de minimis*.

17. Brumlik's bankruptcy makes it even less likely that he will receive any substantial direct benefit from the transaction. Where, as here, the recipient of the benefit has been adjudged a bankrupt, a benefit has been allowed. *Davis Broadcasting Company, Inc.*, 67 FCC 2d 872, 875 (1977). *See also, Seraphim Corporation*, 4 FCC Rcd 8819 (1989); *Pyle Communications of Beaumont, Inc.*, 4 FCC Rcd 8625 (1989). In such situations, there are equities in favor of permitting a benefit to flow to the bankrupt estate, because the creditors of the bankrupt wrongdoer, as well as the station's creditors, would have some recourse. *See Oyate, Inc.*, 3 FCC Rcd 6759 (1988). In this case, those creditors could include the United States, and, thus, the taxpayers.

18. The above-captioned application has been processed and the assignor has been found fully qualified. Therefore, pursuant to the *Second Thursday* policy, we will grant the above-captioned application.

ORDERING CLAUSES

19. ACCORDINGLY, IT IS ORDERED, That the Second Petition for Extraordinary Relief filed on December 15, 1993, by Walter W. Kelley, Trustee, licensee of Television Station WFXL(TV), Albany, Georgia and SGA Associates, Inc. IS GRANTED. That the Application for Assignment of the License of WFXL(TV) from Walter W. Kelley, Trustee, to SGA Associates, Inc. (File No. BALCT-931216KM) IS GRANTED; And That the Petition to Deny the assignment application filed on January 28, 1994, by Manuel Cantu IS DENIED.

20. IT IS FURTHER ORDERED, That the unopposed Petition for Extension of Time filed on February 8, 1994, by Walter W. Kelley, Trustee and SGA Associates, Inc. IS GRANTED, and the time to respond to the Petition to Deny IS EXTENDED to February 16, 1994.

21. IT IS FURTHER ORDERED, That the Motion for Extension of Time filed on February 28, 1994, by Manuel Cantu IS GRANTED IN PART AND DENIED IN PART, and the time to reply to the Opposition to Petition to Deny IS EXTENDED to March 18, 1994.[4]

22. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED, provided that if the pending assignment to SGA, Associates, Inc. is not consummated, the action taken herein shall be void and the proceeding will be returned to hearing status.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

[4] On March 1, 1994, the Applicants filed an Opposition to Cantu's Motion for Extension of Time in which they argued, *inter alia*, that the Motion was interposed for delay and that the time requested was excessive. By a March 3, 1994, letter, the staff extended the response date, but only until March 18, 1994, and not until April 1, 1994, as Cantu had requested.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 29, 1994

CARRIERS FILE REVISIONS TO THEIR COST ALLOCATION MANUALS

PUBLIC COMMENTS INVITED

Several local exchange carriers filed revisions to their Cost Allocation Manuals (CAMs) for the separation of regulated and nonregulated costs for the quarter ended March 31, 1994. Listed below are the names of the carriers that filed revisions and the file number assigned to each revision.

Ameritech Operating Companies	AAD 94-40
Bell Atlantic	AAD 94-41
BellSouth	AAD 94-42
Cincinnati Bell	AAD 94-43
Citizens Utilities	AAD 94-44
Lincoln Telephone	AAD 94-46
Nevada Bell	AAD 94-47
NYNEX	AAD 94-48
Pacific Bell	AAD 94-49
Puerto Rico Telephone	AAD 94-50
Rochester Telephone	AAD 94-51
Southern New England Telephone	AAD 94-52
Southwestern Bell	AAD 94-53
United & Central	AAD 94-54
US West	AAD 94-55

The two companies listed below filed letters stating that there were no changes to their CAMs for the quarter ending March 31, 1994.

American Telephone and Telegraph Company	AAD 94-39
GTE	AAD 94-45

Parties may files comments on the proposed revisions to the CAMs no later than May 26, 1994. Replies should be filed by June 10, 1994. Comments should reference the applicable AAD file number listed above. A copy of each pleading should be sent to Alicia Dunnigan, FCC, Common Carrier Bureau, 2000 L St., N.W. Room 812, Washington, D.C. 20554 and the International Transcription Service (ITS), 2100 M St., N.W., Suite 140, Washington, D.C. 20037, (202) 857-8000. Copies are available for public inspection and copying in the Accounting and Audits Division public reference room 2000 L St., N.W., Suite 812, Washington, D.C. Copies are also available from ITS.

For further information contact Alicia Dunnigan at (202) 634-1861.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Pacific Bell Revisions to Tariff F.C.C. No. 128	Transmittal No. 1688
Nevada Bell Revisions to Tariff F.C.C. No. 1	Transmittal No. 192
Rochester Telephone Corporation Revisions to Tariff F.C.C. No. 1	Transmittal No. 221
Vista Telephone Companies Revisions to Tariff F.C.C. No. 1	Transmittal No. 28

MEMORANDUM OPINION AND ORDER

Adopted: April 21, 1994; Released: April 22, 1994

By the Chief, Tariff Division, Common Carrier Bureau:

1. On June 9, 1993, the Commission released the *BNA Order*,[1] requiring local exchange carriers (LECs) to file tariffs for the provision of billing name and address information (BNA) to telecommunications service providers. The Commission specified that LECs were required to, on or before September 8, 1993,[2] file tariffs for the provision of BNA information of customers with listed telephone numbers and in later Orders, specified that tariffs for the provision of BNA associated with unlisted or nonpublished telephone numbers were to be filed on February 23, 1994.[3] The LECs' tariffs for the provision of "listed" BNA have already taken effect.[4]

2. American Telephone and Telegraph Company (AT&T) and MCI Telecommunications Corporation (MCI) filed petitions to reject or suspend and investigate most of the unlisted BNA tariffs. We consider the issues raised by AT&T and MCI with respect to most of these tariffs in separate Orders. However, we consider in this Order the issues raised by AT&T and MCI with respect to the tariffs filed by Pacific Bell, Nevada Bell, Rochester Telephone Corporation (Rochester), and Vista Telephone Companies (Vista).[5]

3. According to AT&T, the restrictions on unlisted BNA disclosure in the unlisted BNA tariffs of Pacific Bell, Rochester, and Vista are more strict than those adopted in the Commission's Rules.[6] AT&T asserts that the BNA rules require BNA disclosure unless unlisted customers have requested nondisclosure of BNA for calling card, third party, and collect calls.[7] AT&T claims that these BNA tariffs violate the BNA rules by prohibiting BNA disclosure for 1+ calls and 10XXX 1+ calls where those end users have requested that their BNA not be disclosed. AT&T also asserts that these tariffs would prohibit disclosure of unlisted BNA for these calls even if those customers have subscribed to an AT&T calling plan.[8] AT&T also maintains that any limitations on BNA disclosure other than unlisted BNA for calling card, third party, and collect calls are unnecessary to accomplish the Commission's policy of protecting customers' privacy interests.[9] Pacific claims that it does provide BNA for 1+, 10XXX, and optional calling plan customers.[10] Pacific states that it will amend its tariffs to make it clear that it does so, except for the BNA of end users who have requested that their BNA not be disclosed.[11] Rochester and Vista respond that their tariff provisions restricting disclosure of BNA of customers who have requested that their BNA not be disclosed is consistent with Section 64.1201(e)(3) of the Commission's Rules, 47 C.F.R. § 64.1201(e)(3). However, Rochester and Vista also assert that they would revise their tariffs to permit disclosure of BNA for 1+ calls and 10XXX calls, if the Commission concludes that the concerns expressed by AT&T are valid.[12]

4. MCI asserts that Pacific, Nevada, and Rochester have not revised their tariffs to permit BNA to be used for anything other than billing purposes,[13] and do not permit the use of BNA for all the purposes permitted by Section 64.1201(c) of the Commission's Rules, 47 C.F.R. § 64.1201(c).[14] MCI maintains that this violates the Commission's Rules, and constitutes unjust and unreasonable terms and conditions, in violation of Section 201(b) of the Com-

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[1] Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, Second Report and Order, 8 FCC Rcd 4478 (1993) (*BNA Order); on recon.*, Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Reconsideration and Petitions for Stay, CC Docket No. 91-115, 8 FCC Rcd 6393 (*First BNA Reconsideration Order), on further recon.* 8 FCC Rcd 8798 (1993) (*Second BNA Reconsideration Order), recon. pending.*

[2] *BNA Order*, 8 FCC Rcd at 4487 (para. 45).

[3] In the *First BNA Reconsideration Order*, the Commission extended the deadline for filing tariffs for the provision of the BNA data of customers with nonpublished or unlisted telephone numbers to February 9, 1994. *First BNA Reconsideration Order*, 8 FCC Rcd at 6393 (para. 3). In the *Second BNA Reconsideration Order*, this deadline was further extended to February 23, 1994. *Second BNA Reconsideration Order*, 8 FCC Rcd at 8810 (para. 69).

[4] *See* Billing Name and Address Tariffs of Local Exchange Carriers, Memorandum Opinion and Order, 8 FCC Rcd 8211 (Com. Car. Bur., Tariff Div., 1993); Nevada Bell, Revisions to Tariff F.C.C. No. 1, Pacific Bell, Revisions to Tariff F.C.C. No. 128, Order, 9 FCC Rcd 351 (Com. Car. Bur., Tariff Div., 1994). For purposes of this Order, we refer to the BNA associated with customers with listed telephone numbers as "listed BNA," and the BNA associated with customers with unlisted or nonpublished telephone numbers as "unlisted BNA."

[5] Pacific Bell and Nevada Bell filed a joint reply, and Rochester and Vista also filed a joint reply.

[6] AT&T Petition at 3.

[7] AT&T Petition at 3.

[8] AT&T Petition at 5-6.

[9] AT&T Petition at 6.

[10] Pacific and Nevada Reply at 3.

[11] Pacific and Nevada Reply at 3-4.

[12] Rochester and Vista Reply at 1-2.

[13] MCI Petition at 6.

[14] MCI Petition at 7.

munications Act, 47 U.S.C. § 201(b).[15] Pacific and Nevada state they are willing to revise their tariffs to permit all the uses of BNA described in Section 64.1201(c)(1) of the Commission's Rules.[16] Rochester does not respond to this issue.

5. We have reviewed the BNA tariffs filed by Pacific Bell, Nevada Bell, Rochester, and Vista, the petitions to reject or suspend and investigate those tariffs, and the LECs' replies. Based on these filings, we conclude that no compelling argument has been presented that these tariffs are patently unlawful so as to warrant rejection, or that an investigation is warranted at this time.[17]

6. Accordingly, IT IS ORDERED that the petitions for rejection or suspension and investigation filed by American Telephone and Telegraph Company and MCI Telecommunications Corporation against one or more of the transmittals captioned above, ARE DENIED, to the extent indicated in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

[15] MCI Petition at 6-7.
[16] Pacific and Nevada Reply at 1-2.
[17] We note that several of the issues raised with respect to these tariffs are also raised in a petition for reconsideration of the *Second BNA Reconsideration Order*. Nothing in this Order should be interpreted to decide or otherwise prejudge these issues.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

BUCKLEY BROADCASTING CORPORATION OF CALIFORNIA
Assignor

File Nos. BAL-931115EA
BALH-931115EB

and

GROUP W RADIO, INC. (CAL.)
Assignee

For Assignment of Licenses of
KKHI(AM)/KKHI-FM,
San Francisco, California

MEMORANDUM OPINION AND ORDER

Adopted: April 19, 1994; **Released: April 29, 1994**

By the Commission:

1. The Commission has before it for consideration the above-captioned application for consent to assign the licenses of KKHI(AM)/KKHI-FM, San Francisco, California from Buckley Broadcasting Corporation of California ("Buckley") to Group W Radio, Inc. (Cal.) ("Group W") . Group W is a subsidiary of Westinghouse Broadcasting Company Inc., the licensee of VHF television station KPIX(TV)(CBS), San Francisco, California. Because the Grade A contour of KPIX(TV) encompasses the entire community of San Francisco, grant of the assignment application would result in Group W owning attributable interests in a television station and an AM and FM radio station in the same market in violation of 47 C.F.R. Sec. 73.3555(c), the Commission's one-to-a-market rule.[1] Group W requests a waiver of the rule in connection with the proposed assignment. The waiver request is unopposed.[2]

2. In support of its waiver request, Group W relies on the Commission's decision generally to permit television-radio combinations which meet the "Top 25 Markets/30 Voices" test set forth in *Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules* ("Second Report and Order"), 4 FCC Rcd 1741 (1989), *recon. denied in part and granted in part*, 4 FCC Rcd 6489 (1989).[3] Specifically, Group W asserts that the San Francisco-Oakland-San Jose market is the fifth largest Area of Dominant Influence (ADI) television market and has far in excess of 30 separate radio and television voices. According to an exhibit provided by Group W, there are 21 commercial and non-commercial television stations serving the San Francisco-Oakland-San Jose ADI television market and 51 commercial and non-commercial radio stations operating in the San Francisco-Oakland-San Jose television metropolitan market. After taking into account joint ownership of AM and FM radio stations permissible under the radio local ownership rules as well as other AM/FM/TV combinations, Group W's exhibit shows that there will be 53 separately owned or operated broadcast stations in the San Francisco area in existence after the assignment proposed herein is consummated.[4] Group W further states that the evidence supporting its exhibit is derived from the 1993 *Broadcasting & Cable Yearbook*, the Commission's Facility Application Information Report for November 9, 1993, and the Commission's ownership records.

3. In the *Second Report and Order*, the Commission set forth the standard for reviewing waivers of the "one-to-a-market" rule. The Commission concluded that it would "look favorably upon waiver requests when the radio and television stations involved are located in the top 25 ADI television markets as defined by Arbitron Ratings Company and in addition where, following the proposed combination, there will be at least 30 separately owned, operated and controlled broadcast licensees or 'voices'." *Second Report and Order*, 4 FCC Rcd at 1751. To determine the number of voices, the Commission counts all full-power commercial and non-commercial television stations licensed to the relevant ADI television market and the operating AM and FM radio stations licensed to the relevant TV metropolitan market, as defined by the most recent volume of Arbitron's *Television ADI Market Guide*. *Id* at 1751 and 1759 nn.84 and 85. *See generally Arnold L. Chase,*

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[1] Section 73.3555(c) of the Commission's Rules prohibits the common ownership of radio and television stations in the same market if, the 2 mV/m contour of an AM station or the 1 mV/m contour of an FM station encompasses the entire community of license of a television station or, conversely, if the Grade A contour of a television station encompasses the entire community of license of an AM or FM station.

[2] However, we note that informal objections to the sale were filed on January 14, 1994 by Roger P. Maineri, and on February 2, 1994 by The Committee to Save Classical Music on KKHI. Additionally, we have received numerous other letters objecting to the sale of the stations to Group W, including a letter from Sue Bierman, San Francisco Board of Supervisors. These objections are based on allegations that Group W, the proposed assignee, intends to change KKHI's format from classical music to all news. The Commission does not regulate or scrutinize programming formats, nor does it take programming formats into consideration when making licensing decisions. *See Entertainment Formats*, 60 FCC 2d 858 (1976), *recon. denied*, 66 FCC 2d 78 (1977), *rev'd sub nom. WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev'd.* 450 U.S. 582 (1981). However, we encourage interested residents and listeners to make their programming preferences known by directly contacting the station. In this regard, we note that we have received copies of petitions submitted to Group W urging Group W to retain KKHI's present format. The petitions also request that we "consider the one-to-a-market rule." However, the informal objections and the petitions do not raise substantial and material questions of fact that would require further inquiry into this assignment application, and therefore require no further consideration.

[3] The "Top 25 Markets/30 Voices" standard is set forth in Note 7 to the one-to-a-market rule. *See* 47 C.F.R. Sec. 73.3555 n.7.

[4] The exhibit lists Capital Cities/ABC; KQED; San Mateo Community College and Pacific FM Inc. as licensees of radio-television combinations. Also, the exhibit lists seven AM/FM combinations, one AM/FM/FM combination, one FM/FM combination, and one combination of two AM and two FM stations.

5 FCC Rcd 1642, 1646 (1990). Furthermore, the attribution provisions of the Commission's local ownership rules are used to determine the number of separately owned, operated, and controlled broadcast licensees or voices in the relevant area. *Second Report and Order*, 4 FCC Rcd at 1751, 1759 n.87. *See also Capital Cities/ABC, Inc.*, 4 FCC Rcd 5498 (1989). The Commission has determined that "the advantages of permitting radio-television combinations in the top 25 markets, which have numerous competing voices, generally would not undermine the benefits derived from the Commission's traditional pro-competitive and diversity policies." *The Helen Broadcasting Co. Limited Partnership*, 5 FCC Rcd 2829, 2833 (1990). *See Group W Radio Acquisition Co.*, 4 FCC Rcd 8343 (1989).

4. We have determined that the evidence presented by Group W demonstrates, based on our attribution rules, that the proposed combination will not result in fewer than 30 separately owned, operated and controlled broadcast stations in the San Francisco area, which ranks fifth of the ADI television markets. Accordingly, Group W's waiver request has provided the necessary documentation to meet the "Top 25 Markets/30 Voices" standard and, in the absence of rebuttal, to demonstrate that waiver of the rule is warranted. *See, e.g., Malrite Communications Group, Inc.*, 8 FCC Rcd 4212 (1993). Furthermore, Group W is otherwise qualified to be a Commission licensee, and, therefore, we find that a grant of the subject assignment application would serve the public interest.

5. *Conclusion.* In view of the foregoing, IT IS ORDERED, That, the request for waiver of the Commission's one-to-a-market rule, 47 C.F.R. Sec. 73.3555(c), IS HEREBY GRANTED, and the application for assignment of the licenses of KKHI(AM)/KKHI-FM, San Francisco, California, from Buckley Broadcasting Corporation of California to Group W Radio , Inc. (Cal.) IS HEREBY GRANTED. The informal objection filed January 14, 1994 by Roger P. Maineri and the informal objection filed February 2, 1994 by The Committee to Save Classical Music on KKHI ARE HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

Matt Phillips, File No. BPH-901218MD
Joel Kay and
Beverly Lockridge, a partnership
d/b/a FM 104.9 BROADCASTING

For Construction Permit for a
New FM Station on Channel 285A
in Clemson, South Carolina

MEMORANDUM OPINION AND ORDER

Adopted: April 19, 1994; Released: April 29, 1994

By the Commission:

1. The Commission has under consideration a petition for reconsideration filed on April 5, 1993 by Matt Phillips, Joel Kay and Beverly Lockridge, a partnership d/b/a FM 104.9 Broadcasting ("FM 104"). FM 104 requests reconsideration of the action by the Commission which affirmed the Mass Media Bureau's ("Bureau") dismissal of the above-captioned FM 104 application for a construction permit for a new commercial FM station in Clemson, South Carolina. *See Memorandum Opinion and Order,* 8 FCC Rcd 1393 (1993). FM 104 also filed on April 5, 1993 a petition for leave to amend the application to supply the local public notice certification whose omission was the basis for the application's dismissal as unacceptable for tender. An opposition to the petitions was filed by Golden Corners Broadcasting, Inc. ("Golden Corners"), one of the three other applicants for the Clemson allotment who had been found to be acceptable and were designated for a comparative hearing.[1] *See Hearing Designation Order,* MM Docket No. 92-50, 7 FCC Rcd 2301 (MM Bur. 1992). FM 104 filed a reply. We will deny the petitions for reconsideration and for leave to amend for the following reasons.

2. First, the FM 104 petition for reconsideration does not rely on new facts or changed circumstances. *See* 47 C.F.R. § 1.106(b)(3). Second, much of the petition repeats arguments previously presented by FM 104 and considered by the Commission and therefore does not warrant reconsideration. *See WWIZ, Inc.,* 37 FCC 685 (1965), *aff'd sub nom. Lorain Journal Co. v. FCC,* 351 F.2d 824 (D.C. Cir. 1965); *Fresno FM Ltd. P ship,* 7 FCC Rcd 4339 (1992).

3. Nevertheless, two points raised in the petition for reconsideration will benefit from clarification. First, FM 104's newly raised argument that the "hard look" requirements were adopted in violation of the notice and comment rule making provisions of the Administrative Procedure Act should have been presented earlier. In any event, similar arguments have been fully considered and rejected by the Commission. *See JEM Broadcasting Company, Inc.,* 8 FCC Rcd 77 (1992).[2] Finally, FM 104, citing *WAIT Radio v. FCC,* 418 F.2d 1153 (D.C. Cir. 1969), recasts the argument in its previous petition for reconsideration as a "request for waiver" of the "hard look" requirements rather than as a direct challenge to them. Such waiver cannot be granted. Under "hard look" processing, a request to waive a tenderability requirement would have to be filed with the original application or as an amendment filed during the application filing window, *see* 47 C.F.R. § 73.3522(a)(6); *Star Signal Corp.,* 1 FCC Rcd 450 (1986). FM 104 made no timely waiver request and therefore a waiver may not be considered now. *Cf. Colorado Radio Corp. v. FCC,* 118 F.2d 24, 26 (D.C. Cir. 1941). In addition, even a timely filed waiver request would have been denied because of the prejudice that would have otherwise ensued to the competing applicants who complied with the "hard look" requirements. *See Pike Family Broadcasting, Inc.,* 7 FCC Rcd 4250 (1992); *Charles N. Morris et al.,* 7 FCC Rcd 4247, 4248 (1992); *Oxnard Broadcasting, Inc.,* 7 FCC Rcd 2178, 2179 (1992); *Memorandum Opinion and Order,* MM Docket No. 88-375, 6 FCC Rcd 3417, 3423-3424 (1991). Likewise, FM 104's petition for leave to amend must be denied as a late-filed and prejudicial attempt to cure a tenderability defect.

4. ACCORDINGLY, IT IS ORDERED, That the petition for reconsideration and the petition for leave to amend, both filed on April 5, 1993 by FM 104.9 Broadcasting, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[1] By *Memorandum Opinion and Order,* FCC 92M-740, released July 6, 1992, the presiding Administrative Law Judge approved a joint settlement agreement among these three applicants and granted the Golden Corners application. A construction permit was issued to Golden Corners on December 18, 1992. Subsequently, on April 19, 1993, Golden Corners filed a license to cover its permit and began broadcasting, pursuant to program test authority, using call sign WCCP-FM.

[2] We also note that arguments regarding the alleged lack of notice and comment are grossly untimely; they should have been raised in connection with the underlying order adopting the "hard look" requirements. *See, e. g., National Labor Relations Board Union v. FLRA,* 834 F.2d 191, 196 (D.C. Cir. 1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORPORATION,
WESTERN UNION INTERNATIONAL,
INC., and
TELECOM*USA, INC.,
Complainants,

v.

SOUTHERN NEW ENGLAND TELEPHONE COMPANY,
Defendant.

File No. E-93-137

ORDER

Adopted: April 22, 1994; Released: April 29, 1994

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On September 30, 1993, MCI Telecommunications Corporation, Western Union International, Inc., and Telecom*USA, Inc. (collectively MCI) filed the above-captioned complaint against Southern New England Telephone Company (SNET) seeking damages resulting from SNET's alleged violations of the Commission's rate of return prescription for the period January 1, 1989 through December 31, 1990. On April 7, 1994, however, MCI and SNET filed a joint motion to dismiss the complaint with prejudice stating that a mutually agreeable settlement of all pending controversies has been reached.

2. We are satisfied that granting the parties' motion to dismiss the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of the Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated in Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the parties' Joint Motion to Dismiss IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-30

In the Matter of

Amendment of Section 73.606(b), RM-8457
Table of Allotments,
TV Broadcast Stations.
(Kaneohe, Hawaii)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 14, 1994; Released: April 29, 1994

By the Acting Chief, Allocations Branch:

Comment Date: June 20, 1994
Reply Comment Date: July 5, 1994

1. Before the Commission for consideration is a petition for rule making filed by Collins/West Broadcasting ("petitioner"), requesting the allotment of UHF Television Channel 66 to Kaneohe, Hawaii, as that community's first local television service. Petitioner provides information in support of the proposal and states its intention to apply for the channel, if allotted.

2. In support of its request, petitioner notes that Kaneohe is a census designated place ("CDP") with a 1990 population of 35,448, in Honolulu County (population 836,231) located on the north shore of Oahu approximately 12.5 kilometers (8 miles) northeast of Honolulu.[1] Petitioner submits that Kaneohe has its own post office, courthouse, primary and secondary schools, police and fire stations, shopping malls, approximately 12 churches, banks, restaurants and other community facilities.

3. A staff engineering analysis of the proposal indicates that UHF Television Channel 66 can be allotted to Kaneohe, Hawaii, consistent with the minimum distance separation requirements of Section 73.610 of the Commission's Rules.[2] Although the Commission has imposed a temporary freeze on new television allotments in certain metropolitan areas, the proposed allotment at Kaneohe is not affected thereby. *See Notice of Inquiry*, 2 FCC Rcd 2125 (1987) and *Order*, 52 FR 28346, July 29, 1987.

4. The Commission believes it would be in the public interest to seek comments on the proposal to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Kaneohe, Hawaii	-	66

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before June 20, 1994, and reply comments on or before July 5, 1994, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Jeffrey C. Hill, President
Collins/West Broadcasting
45-934 Kamehameha Highway, #C-127
Kaneohe, Hawaii 96744
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] Population figures are taken from the 1990 U.S. Census.
[2] The coordinates for Channel 66 at Kaneohe are North Latitude 21-25-18 and West Longitude 157-48-06.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-282

In the Matter of

Amendment of Section 73.202(b), RM-8371
Table of Allotments,
FM Broadcast Stations.
(Eureka, Nevada)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 14, 1994; Released: April 29, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Keith E. Lamonica ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 8144 (1993), proposing the allotment of Channel 233A to Eureka, Nevada, as the community's first local aural transmission service. Petitioner failed to file comments reiterating his intention to apply for the channel, if allotted. No other comments were received.

2. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted, and absent such an expression of interest, it is the Commission's policy to refrain from allotting the channel. Therefore, petitioner's request to allot Channel 233A to Eureka will be dismissed.

3. Accordingly, IT IS ORDERED, That the request of Keith E. Lamonica to allot Channel 233A to Eureka, Nevada, IS DISMISSED.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-521

In the Matter of

Amendment of Section 73.202(b),	RM-6963
Table of Allotments,	RM-7254
FM Broadcast Stations.	
(Lancaster, Wisconsin, Clinton and Manchester, Iowa, and Morrison, Illinois)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: April 19, 1994, Released: April 29, 1994

By the Chief, Policy and Rules Division:

1. The Commission has before it the Petition for Reconsideration ("Petition") of the *Report and Order* (*"R&O"*) in the above-docketed proceeding, 6 FCC Rcd 6113 (1991), filed by K to Z, Ltd. ("K to Z"), licensee of Station WGLR-FM [formerly WAXL(FM)], Channel 249A, Lancaster, Wisconsin. The *R&O* granted the rule making proposal (RM-7142) filed by Susan I. Coloff ("Coloff"), licensee of Station KMCH, Channel 234A, Manchester, Iowa. KILJ, Inc., licensee of Station KILJ, Channel 288C3, Mount Pleasant, Iowa, and Janet P. Bro ("Bro"), permittee of Station WZZT(FM) at the time of its filing, Channel 236A, Morrison, Illinois, filed supporting comments. Coloff filed an opposition to the Petition and K to Z filed reply comments.[1]

2. *Background.* K to Z filed a petition for rule making (RM-6963) proposing the substitution of Channel 249C3 for Channel 249A at Lancaster, Wisconsin, and modification of its license for Station WAXL(FM) accordingly. To accommodate that substitution, K to Z also proposed the substitution of Channel 234A for Channel 249A at Clinton, Iowa, and Channel 271A for Channel 236A at Morrison, Illinois. A *Notice of Proposed Rule Making and Orders to Show Cause*, 4 FCC Rcd 8204 (1989), was issued proposing the substitution at Lancaster and requesting that the licensees for Station KCLN-FM, Clinton, and Station WZZT(FM), Morrison, show cause why their authorizations should not be modified to operate on Channel 234A in lieu of Channel 249A and on Channel 271A in lieu of Channel 236A, respectively. Coloff later filed a petition for rule making proposing the substitution of Channel 234C3 in lieu of Channel 234A at Manchester and modification of her then-pending construction permit for Station KMCH accordingly. That proposal conflicted with K to Z's proposal to upgrade its Lancaster station in that the Manchester proposal would be short-spaced to the necessary substitution of Channel 234A at Clinton in order to accommodate the Lancaster upgrade. Coloff's petition, therefore, was treated as a counterproposal.

3. The *R&O* granted Coloff's proposal to upgrade Station KMCH by substituting Channel 234C3 for Channel 234A at Manchester and to modify its permit accordingly. It also denied K to Z's petition to upgrade its Station WGLR(FM) by substituting Channel 249C3 for Channel 249A at Lancaster. Coloff's Manchester proposal was found to be superior according to the fourth of the allotment priorities, Public Interest Matters, set forth in *Revision of FM Policies and Procedures*, 90 FCC 2d 1988 (1982).[2] It was found that the proposed extended service area, or gain area, of the Manchester proposal would provide new service to a larger population (57,302) than would the gain area of the Lancaster proposal (26,438). Engineering analysis revealed that an upgraded Station KMCH would provide new reception service to more than twice the number of persons as would be provided such service by an upgraded Station WGLR(FM).

4. *Petition for Reconsideration.* K to Z claims that the Commission has underestimated the population in the gain area of its Lancaster proposal and overestimated that of Coloff's Manchester proposal. K to Z asserts that on reconsideration its Lancaster proposal should be granted based on its proposed new reception service to a larger population than that of the Manchester proposal. Specifically, K to Z states that its engineering study, conducted after the release of the *R&O*, showed that the gain area population of its Lancaster Class C3 proposal would be 97,336 persons, whereas the gain area population of the Manchester C3 proposal totaled only 52,579 persons.[3] [4]

5. Coloff opposes the Petition because it reargues matters already considered and resolved. Also, it argues that to permit the filing of population studies after an allotment order would interfere with the orderly conduct of Commission business. KILJ expresses its concern that its construction permit for an upgrade to its Station KILJ at Mount Pleasant may be affected by a grant of the Petition. It contends that the upgrade has "become uncontestable." Bro supports the Petition except that she requests that K to Z's proposed substitution of Station WZZT(FM)'s Channel 271A at Morrison (from Channel 236A) be changed to Channel 274A. Bro contends that Channel 271A would be short-spaced to Station WZLC, Channel 271A, at Ogelsby, Illinois. Bro also notes that Channel 274A, unlike Channel 271A, would permit operation at 6 kilowatts of effective radiated power ("ERP").

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[1] Station WZZT(FM) is currently licensed to WZZT, Inc. (File No. BLH-910429KD).

[2] The allotment priorities are: 1) First full-time aural service; 2) Second full-time aural service; 3) First local service; and 4) Other public interest matters [co-equal weight given to priorities 2) and 3)

[3] All population figures are from the 1980 U.S. Census.

[4] K to Z also states that Coloff claimed in its supplemental engineering statement submitted with its reply to the *Notice*, that the Lancaster proposal "would provide a new service to 50,000 or more persons." In the same engineering statement, K to Z notes, Coloff determined that her own proposal would include only 42,004 persons in the Manchester gain area.

6. In reply, K to Z notes that Coloff cites no authority for its argument that matters that have already been resolved by the Commission cannot be the subject of a petition for reconsideration. K to Z argues that grounds for reconsideration lie, particularly when the basis for the *R&O* 's granting Coloff's proposal was a flawed engineering study, the results of which were not revealed until the *R&O* was released. K to Z further notes that Coloff in its opposition does not dispute the accuracy of K to Z's population study set forth in its Petition.

7. *Discussion.* After carefully reviewing K to Z's Petition for Reconsideration and reevaluating our engineering analysis that served as the basis for the *R&O*, we will grant the Petition. We will rescind the substitution of Channel 234C3 for Channel 234A at Manchester, substitute instead Channel 249C3 for Channel 249A at Lancaster, and make the substitution of channels necessary to accommodate the Lancaster upgrade.

8. After reaffirming that none of the first three of the allotment priorities applied in order to choose between the Manchester and the Lancaster proposed upgrades,[5] we employed the fourth of the priorities, "public interest matters." Accordingly, we determined which of the proposals would provide service to the greater population in their respective gain areas. As we did in the *R&O*, we compared the respective new coverage areas of K to Z's upgrade proposal for its Station WGLR(FM) at Lancaster with that of Coloff's for her Station KMCH at Manchester, based on an assumption of maximum facilities for each station and uniform distribution of population, consistent with the principles stated in *Roanoke Rapids, North Carolina,* 9 FCC 2d 672 (1967), and in *Greenup, Kentucky and Athens, Ohio,* 2 FCC Rcd 4319 (1987); *aff'd in relevant part,* 4 FCC Rcd 3843 (1989); *aff'd in relevant part,* 6 FCC Rcd 1493 (1991); *appeal dismissed sub nom. WATH, Inc. v. FCC,* D.C. Cir No. 91-1268 (September 26, 1991) (*"Greenup"*). We now find that K to Z's proposal would provide additional reception service to 95,495 persons in the Lancaster area while Coloff's proposal would result in reception service in the Manchester area to an additional 66,232 persons.

9. Therefore, on reconsideration we find that K to Z's population estimate is consistent with ours. Both show that the proposed Lancaster reception area would be significantly larger than the proposed Manchester reception area, with an almost identical population in the Lancaster area. This is, however, contrary to the findings relied upon in the *R&O*. Those findings were based on an inadvertent use of the incorrect class contour distances, *i.e.* distances to the 1.0 mV/m contours for the respective classes of stations. On reconsideration, utilizing the correct class contour distances of 24.2 kilometers for 3 kilowatt Class A stations[6] and 39.1 kilometers for Class C3 stations, we obtain the larger gain areas that each station would serve. The gain area of K to Z's Lancaster proposal would result in service to a larger population than would the smaller gain area of the Manchester proposal. Therefore, under the Commission's allotment priority four, the Lancaster proposal prevails.

10. We believe that the public interest will be served by a Channel 234C3 upgrade at Lancaster and by the substitutions of channels at two existing stations in order to accommodate the upgrade. The substitutions are Channel 234A in lieu of Channel 249A at Station KCLN-FM, Clinton, Iowa, and Channel 274A in lieu of Channel 236A, Morrison, Illinois.[7] The allotment of Channel 234C3 to Manchester will be rescinded and Station KMCH will continue operation on Channel 234A.

11. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. *See Circleville and Columbus, Ohio,* 8 FCC 2d 159 (1967). K to Z has stated its intention to reimburse the licensees of Station KCLN-FM and of Station WZZT(FM), for reasonable costs in changing their respective frequencies.[8]

12. *Technical Summary.* Channel 234C3 can be allotted to Lancaster at Station WGLR-FM's existing site. The substituted Channel 234A at Clinton may be operated at the existing site for Station KCLN-FM in compliance with our minimum distance separation requirements, assuming a maximum ERP of 3 kilowatts. For Channel 274A at Morrison, however, Station WZZT(FM) may be operated at its existing site at the higher maximum power of 6 kilowatts.[9]

13. *Ordering Clauses.* Accordingly, pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283 of the Commission's Rules, IT IS ORDERED That effective May 31, 1994, the FM Table of Allotments, Section 73.202(b) of the Rules IS AMENDED with respect to the following communities:

City	Channel No.
Lancaster, Wisconsin	249C3
Clinton, Iowa	234A, 241C1
Morrison, Illinois	274A

14. IT IS FURTHER ORDERED That the Petition for Reconsideration filed by K to Z Ltd. IS GRANTED.

15. IT IS FURTHER ORDERED That the allotment of Channel 234C3 to Manchester, Iowa IS RESCINDED.

16. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of K to Z, Ltd. for Station WGLR-FM, IS MODIFIED to specify operation on Channel 249C3 in lieu of Channel 249A, subject to the following conditions:

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[5] The *R&O* correctly found that neither upgraded station would provide a first or second full-time aural service nor would each provide a first local service. Therefore, neither proposal satisfied the first three allotment criteria.

[6] Because K to Z's petition for rule making was filed prior to October 2, 1989, when the maximum ERP was raised from 3 to 6 kW for Class A authorizations, we considered all existing Class A authorizations as having a maximum of 3 kW ERP.

[7] We choose to substitute Channel 274A instead of Channel 271A for Channel 236A at Morrison primarily because Channel 271A would be short-spaced to Channel 271A at Ogelsby, Illinois, as Bro alleges in her comments.

[8] The question of reimbursement of the licensee of Station KCLN-FM has become moot. K to Z has become the licensee of Station KCLN-FM by virtue of an assignment of license. (File No. BALH-891106EB).

[9] The coordinates for Channel 249C3 at Lancaster are North Latitude 42-50-18 and West Longitude 90-40-14. The coordinates for Channel 234A at Clinton are 41-54-32 and 90-13-20, and for Channel 274A at Morrison are 41-50-16 and 89-55-29.

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1260 of the Commission's Rules; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

17. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of K to Z, Ltd. for Station KCLN-FM, IS MODIFIED to specify operation on Channel 234A in lieu of Channel 249A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KCLN-FM's license File No. BALH-891106EB, except the channel as specified above. Any other changes, except those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED that the transmission facilities comply in all respects with license File No. BALH-891106EB, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

18. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WZZT IS MODIFIED to specify operation on Channel 274A in lieu of Channel 236A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station WZZT's license, File No. BLH-910429KD, except the channel as specified above. Any other changes, except those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license File No. BLH-910429KD, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

19. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, K to Z, Inc., licensee of Station WGLR(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

20. IT IS FURTHER ORDERED That the Secretary shall send a copy of this *Memorandum Opinion and Order* by Certified Mail, Return Receipt Requested, to the licensees as follows:

K to Z, Ltd.
206 South Sheridan Street
Lancaster, WI 53813

Susan I. Coloff
223 West Main Street
Manchester, IA 52057

WZZT, Inc.
200 North Dearborn
Chicago, IL 60601

21. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

22. For further information concerning this proceeding, contact J. Bertron Withers, Jr., Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 22.521(b) of the Commission's Rules to amend the table of assignments for air-ground stations in the Public Mobile Service	**CC Docket No. 91-121** RM 6792 **CC Docket No. 92-137** RM 7859

REPORT AND ORDER

Adopted: April 6, 1994; Released: April 28, 1994

By the Commission:

I. INTRODUCTION

1. On April 25, 1991, we released a Notice of Proposed Rule Making (Notice),[1] in CC Docket No. 91-121, seeking comments on the proposals to reassign channels in the air-ground service in Pittsburgh, Pennsylvania; Seattle, Washington; Washington, D.C.; Grand Canyon and Williams, Arizona; Newark, New Jersey; and Laurel Run, Pennsylvania. Subsequently, on July 1, 1992, we released a Notice of Proposed Rule Making (NPRM),[2] in CC Docket No. 92-137, which proposed allocating working channel 3 (454.850 MHz) to Schaller, Iowa. For the reasons set forth below, we do not adopt the rule proposed in CC Docket No. 92-137 as set forth in the NPRM, and we adopt in part the rules proposed in CC Docket No. 91-121 based upon comments filed in response to the Notice.

II. BACKGROUND

2. Air-ground radiotelephone service in the 450 MHz band is a public radio service between base stations and airborne mobile stations. In creating the air-ground service, the Commission adopted the goal of encouraging the provision of a nationwide air-ground service utilizing the minimum amount of spectrum necessary. The Commission recognized that its allocation of 12 air-ground channels would permit nationwide service if the channels were used in sufficiently separate geographic areas.[3]

III. DISCUSSION

A. Canada's Request

3. The Canadian Government wrote to the Commission informing us that it was receiving interference to its Toronto facility from our allocation of channel 12 in Pittsburgh, Pennsylvania.[4] The Canadian Government asked the Commission to consider moving channel 10 from Washington, D.C. to Pittsburgh. The Notice proposed reallocating channels as Canada requested. No comments were filed in response to the Notice.[5] To avoid this interference problem, we hereby adopt the proposal as set forth in the Notice, move channel 10 from Washington to Pittsburgh and delete channel 12 from the Pittsburgh area.

4. In its letter, Canada also stated that it anticipated interference from channel 9 in Seattle, should that channel be activated. In the Notice, we proposed to delete channel 9 from Seattle. We hereby adopt that proposal to avoid potential interference and delete channel 9 from Seattle.

B. Mtel's Request

5. Mobile Telecommunications Technologies Corp. (Mtel) proposed moving its facility from the Grand Canyon Airport to Williams, Arizona.[6] It proposed this change because of the inefficiency of operation at the Grand Canyon Airport. An engineering review of Mtel's proposed relocation revealed that no co-channel interference would result from the move to Williams, Arizona. We find that the public interest will be served by the change Mtel proposed. Therefore, we hereby amend Section 22.521(b)

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[1] Amendment of Section 22.521(b) of the Commission's Rules to Amend the Table of Assignments for Air-Ground Stations in the Public Mobile Service, 6 FCC Rcd 2238 (1991). The Notice was issued in response to a Petition for Rulemaking filed by All-American Products, Inc., May 23, 1989, and requests from Mobile Telecommunications Technologies, Corp. and the Canadian Department of Communication.

Comments, and reply comments, were filed in this proceeding by: All-American Products, Inc.; Pactel Paging; Mobile Telecommunications Technologies, Corp.; and Global-Wulfsberg Systems. Congressman Paul E. Kanjorski sent a letter after the period for commenting had passed encouraging us to reallocate a channel to the Wilkes-Barre/Scranton area.

[2] Amendment of Section 22.521(b) of the Commission's Rules to Amend the Table of Assignments for Air-Ground Stations in the Public Mobile Service, 7 FCC Rcd 4199 (1992). The NPRM was issued in response to a Petition for Rulemaking filed by Schaller Telephone Company, October 18, 1991. Comments in this matter were filed by Schaller Telephone Company.

[3] Amendment of Parts 2, 21, and 87 of the Commission's Rules to Establish a Public Air-Ground Radiotelephone Service, 22 FCC 2d 716 (1969).

[4] Letter from P. Carrey, Acting Manager, Terrestrial Services, Spectrum Management Operations, Canadian Department of Communications to W. Harris, Assistant Bureau Chief, Common Carrier Bureau, Nov. 26, 1990 (responding to a letter from W. Harris dated May 4, 1990).

[5] The Mobile Services Division (MSD) granted special temporary authority to the Pittsburgh licensee to shift to channel 10 during the pendency of this proceeding. Letter to F. Leary, Pennsylvania Bell, from G. Vogt, Chief, Mobile Services Division, Feb. 22, 1991.

[6] In its reply comments, filed June 25, 1991, Mtel requested that the Commission bifurcate this proceeding because there was no controversy over several portions of the proposed rule change, but there was controversy over the Laurel Run proposal. We chose not to bifurcate at that time, and we are now resolving all the issues presented in the Notice.

of title 47 of the Code of Federal Regulations to delete channel 12 from Grand Canyon, Arizona and assign it to Williams, Arizona.

C. All-American's Request

6. All-American Products, Inc. (All-American) proposed reassigning channel 9 from Newark, New Jersey to Laurel Run, Pennsylvania. All-American argued that channel 9 was not in use in Newark, but that it could be used at the Wilkes-Barre/Scranton Airport in Pennsylvania where there is no channel assigned. Pactel Paging filed comments opposing the proposal set forth in the Notice to move channel 9. Pactel argued that the Notice incorrectly assumed that the channel was not in use in the Newark area. However, Pactel points out, NYNEX filed for channel 9 in Kew Gardens, New York, less than 20 miles from Newark.[7] Then, NYNEX transferred all of its air-ground facilities in the New York area to Pactel. Pactel is now operating channel 9 from Kew Gardens, near Newark. We will not reassign channel 9 in Newark to Laurel Run, Pennsylvania because it is currently in use. The frequency was originally assigned to Newark in anticipation of significant demand in the area. In accordance with our expectations, licensees have applied for service in those areas.

7. As an alternative, All-American proposed reassigning channel 2 from Boston to Laurel Run, Pennsylvania.[8] Currently, there are applications pending for service on channel 2 in Boston. While we recognize that some additional service could be provided if we reallocated a frequency to Laurel Run, Pennsylvania, we originally assigned frequencies to the areas of greatest population and greatest general aviation traffic. All-American's petition and comments represent that there are approximately 100,000 airplane take-offs and landings annually in the Wilkes-Barre/Scranton airport. All-American does not refute that many of those are not general aviation flights but are commercial aviation served by a different air-to-ground radiotelephone service. Nor has All-American shown that aircraft in flight over the Wilkes-Barre/Scranton area are inadequately served by the nearby air-ground station. Channel 2 was originally assigned to Boston in anticipation of substantial demand for service there. For these reasons, we find that All-American has not justified our reassigning channel 2 from Boston to Laurel Run, Pennsylvania. Therefore, we deny All-American's request for a reassignment of channel 2 from Boston.[9]

D. Schaller's Request

8. Schaller Telephone Company (Schaller) requested that we assign channel 3 to Schaller, Iowa. Schaller's petition for rulemaking stated that there would be no co-channel interference problems posed by this allocation,[10] and the NPRM proposed the requested channel assignment. However, Schaller, in its petition and comments, failed to note that channel 3 was already allocated 200 miles away in Minneapolis. Based on its submissions, we are not convinced that Schaller can show interference-free operation vis-a-vis the pending operation in Minneapolis. Our table of allocations does not currently allocate co-channel stations within 400 miles of each other (most co-channel allocations maintain a separation of greater than 500 miles). As noted above, the proposed allocation to Schaller is merely 200 miles from the co-channel allocation in Minneapolis. Analysis by Commission engineers indicates that 200 miles is too close to ensure interference-free operation between co-channel stations.[11] Schaller indicated that the nearest co-channel station was in service more than 500 miles away, which provided sufficient separation to avoid interference problems.

9. Schaller erred in confusing licensed operation of a channel with allocation of a channel. Channel 3 was not licensed in Minneapolis, although it was allocated there. Moreover, before the NPRM was adopted Pactel Paging had filed an application to provide service on channel 3 in Minneapolis. That application is pending, as are applications from four other applicants for channel 3 in Minneapolis. Consequently, Schaller's statement, that the minimum distance channel separation requirement is met, is incorrect. Therefore, we find that the public interest would not be served by granting Schaller's request. We will not allocate channel 3 to Schaller, Iowa.[12]

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[7] Section 22.521(b) provides, in part, "Base stations may be assigned the following channels and shall be located within 25 miles of the coordinates specified, or if none, the main post office...." 47 C.F.R. § 22.521(b).

[8] As required by the Notice, All-American made this alternative proposal in its comments. The Commission issued a subsequent Public Notice announcing All-American's proposal to move channel 2 from Boston. All parties then had an opportunity to comment on the alternative proposal, which All-American and Pactel did.

[9] Reply comments were filed in this rulemaking proceeding by Global-Wulfsberg Systems (Global). Global's pleading supports the provision of air-ground service in the Wilkes-Barre/Scranton area because it believes there is unmet demand for service. Yet, Global's observation of unmet demand for service is unsubstantiated by any evidentiary showing.

[10] Schaller, Petition for Rulemaking, filed Oct. 18, 1991, at 3-4.

[11] In the Commission's rulemaking proceedings leading to implementation of the air-to-ground service, the Commission determined that 500 miles was the appropriate distance for co-channel separation. Amendment of the Commission's Rules to establish a public air-to-ground service, Notice of Proposed Rulemaking, FCC 62-457, Docket 14615, RM 308, released May 4, 1962. In the rules proposed in the NPRM, the Commission set forth a table of assignments for channels in cities across the country which proposed allocations that were in accordance with the separation requirements the Commission proposed. Despite the Commission's failure to adopt the proposed amendments to the rules set forth in that rulemaking, in a subsequent proceeding the Commission adopted approximately the same table of allocations for the air-to-ground service. Amendment of Parts 2, 21 and 87 of the Commission's Rules to Establish a Public Air-Ground Radiotelephone Service, 22 FCC 2d 716, 729 (1969). By adopting the same table of allocations, the Commission implicitly adopted the same rationale which it set forth in the earlier NPRM. The Commission has never strayed from the position that there is a need for substantial co-channel separation to protect interference free operation. In fact, the current proposal to amend Part 22 of the Commission's rules ratifies the need for 497 mile co-channel separation in this service. Revision of Part 22 of the Commission's Rules, Notice of Proposed Rulemaking, 7 FCC Rcd 3658, 3730 (proposed rule § 22.813(a)) (1992).

[12] We note here that Schaller could have filed to reallocate channel 3 since it was already allocated to Minneapolis according to our Rules, 47 C.F.R. § 22.521(b). Despite the fact that there was no licensee operating on that channel in Minneapolis at the time Schaller filed its request, the channel was allocated

IV. ORDERING PARAGRAPHS

10. Authority for the rule changes adopted herein is contained in Sections 1, 4(i), 4(j) and 303(r) of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r).[13]

11. IT IS HEREBY ORDERED THAT Section 22.521(b) of the Commission's Rules IS AMENDED to reflect the channel assignments set forth in the Appendix to this Order, consistent with the terms of this Report and Order.

12. IT IS FURTHER ORDERED THAT CC Docket No. 91-121 and CC Docket No. 92-137 ARE HEREBY CONCLUDED.

13. IT IS FURTHER ORDERED THAT the rule changes made herein WILL BECOME EFFECTIVE 60 days from the date of their publication in the Federal Register.

14. For further information, contact James S. Gumbert ((202) 632-0914), Mobile Services Division, Common Carrier Bureau.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

Part 22 of Title 47 of the CFR is amended as follows:

Part 22 - Public Mobile Service

1. The authority citation for Part 22 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. §§ 154, 303.

2. Section 22.521(b) is amended by revising the entries for Seattle, Washington; Pittsburgh, Pennsylvania; Grand Canyon, Arizona; and Williams, Arizona to read as follows:

22.521 Air-ground radiotelephone service.

* * * * *

(b) * * *

Location	Channel
* * *	
Arizona:	
Phoenix	2, 8
Williams	12
* * *	
District of Columbia:	
Washington	1, 7
* * *	
Pennsylvania:	
Pittsburgh	4, 10
* * *	
Washington:	
Seattle	1, 2, 5

and available for licensing in Minneapolis. We do not generally reallocate a channel to a new location when there are applications for the frequency where it was originally allocated.

[13] Both Notices of Proposed Rule Making, CC Docket No. 91-121 and CC Docket No. 92-137, certified that the provisions of the Regulatory Flexibility Act are not applicable to the changes being proposed in these proceedings. Additionally, the new rules do not impose a new or modified information collection requirement on the public requiring approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act of 1980.

Before the
Federal Communications Commission
Washington, D.C. 20554

ET Docket No. 92-9

In the Matter of

Redevelopment of Spectrum to	RM-7981
Encourage Innovation in the	RM-8004
Use of New Telecommunications	
Technologies	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: March 8, 1994; Released: March 31, 1994

By the Commission: Commissioners Quello and Barrett issuing seperate statements.

INTRODUCTION

1. By this action, the Commission refines and clarifies the rules and policies adopted to make spectrum available for emerging telecommunications technologies. At previous stages of this proceeding, we took the following actions: 1) allocated spectrum for emerging technologies at 2 GHz that could be used by new services, such as the personal communications services (PCS);[1] 2) reallocated five fixed microwave bands and adopted associated rules to accommodate existing 2 GHz fixed microwave users;[2] and 3) adopted provisions intended to provide reasonable access to 2 GHz spectrum by new services.[3] In this Memorandum Opinion and Order, we respond to twelve petitions for reconsideration or clarification that address a variety of issues related to these actions. These modifications and clarifications conclude our actions to allocate spectrum that can be used for emerging technologies. Such new technologies are expected to contribute to the development of the national information infrastructure and to serve the need for ubiquitous wireless access to voice and data communications. These developments will provide new services to the public, create new jobs and foster effective competition in the global market.

BACKGROUND

2. In this proceeding the Commission allocated 220 MHz in the 1850-1990, 2110-2150, and 2160-2200 MHz bands (2 GHz bands) for emerging technologies and adopted a regulatory framework that will allow this spectrum to be shared by new services and the existing fixed microwave services that currently use these frequencies. In those instances where both of these services cannot share this spectrum, existing 2 GHz facilities can be relocated to other spectrum. The regulatory framework is intended to provide licensees of services using emerging technologies with access to 2 GHz frequencies in a reasonable timeframe and, at the same time, prevent disruption to existing 2 GHz operations and minimize the economic impact on the existing licensees.

3. In the *First Report and Order and Third Notice of Proposed Rule Making* (*First R&O*), the Commission adopted the emerging technology allocation. It also set forth a regulatory framework that encourages incumbent 2 GHz licensees to negotiate voluntary relocation agreements with an emerging technology service licensee or unlicensed device manufacturer when frequencies used by an existing 2 GHz facility are needed to implement the emerging technology. Should voluntary relocation negotiations fail, the emerging technology service provider or unlicensed device manufacturer or representative could request involuntary relocation of the existing facility. In such a case, the emerging technology service provider must:

1) guarantee payment of all costs of relocating to a comparable facility, including all engineering, equipment, and site costs and FCC fees, as well as any reasonable additional costs;

2) complete all activities necessary for placing the new facilities into operation, including engineering and frequency coordination; and

3) build and test the new microwave (or alternative) system.

4. In the *Second Report and Order* (*Second R&O*), the Commission reallocated five bands: 3.7-4.2 GHz (4 GHz); 5.925-6.425 GHz (lower 6 GHz); 6.525-6.875 GHz (upper 6 GHz); 10.565-10.615/10.630-10.680 GHz (10 GHz); and 10.7-11.7 GHz (11 GHz) to the private operational and common carrier fixed microwave services on a co-primary basis and prescribed channelization plans and technical rules to govern their use.[4] The existing 20 MHz channel plan was maintained at 4 GHz and a 1.25 MHz-based plan was adopted at 6, 10, and 11 GHz. The Commission found that these channeling plans would be equitable to all manufacturers, would efficiently satisfy the spectrum requirements of low capacity 2 GHz licensees by permitting lower-cost equipment to be used, and would reduce the potential for interference to satellite operations at 4 GHz. The *Second R&O* also adopted Part 21 coordination procedures and Part 94 interference standards in all bands.

5. In the *Third Report and Order* (*Third R&O*), the Commission completed the details of a transition plan to enable new service providers to share with or relocate incumbent facilities to other spectrum.[5] It provided separate relocation policies for frequencies to be used by licensed emerging technology services and for those to be used for unlicensed devices. For licensed services, a fixed two-year period commencing with the Commission's acceptance of applications for emerging technologies was adopt-

[1] *First Report and Order and Third Notice of Proposed Rule Making*, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992).
[2] *Second Report and Order*, ET Docket No. 92-9, 8 FCC Rcd 6495 (1993).
[3] *Third Report and Order and Memorandum Opinion and Order* , ET Docket No. 92-9, 8 FCC Rcd 6589 (1993).
[4] Note 2, *supra*.
[5] Note 3, *supra*.

ed. During this period negotiation over the terms of relocation is encouraged but not required. After this fixed period expires, an emerging technology licensee may initiate a one-year period for mandatory negotiations with the fixed microwave licensee. For unlicensed devices, a single one-year mandatory negotiation period was adopted that will commence with the initiation of negotiations by manufacturers of unlicensed devices or their representatives. For both licensed services and unlicensed devices, after expiration of the mandatory negotiation period, involuntary relocation of the fixed microwave facilities may be sought if agreement is not reached by the parties. In all instances of involuntary relocation, the emerging technology provider will be required to pay all costs associated with the relocation.

6. In the *Third R&O* we also clarified the types of 2 GHz public safety facilities that are exempt from mandatory relocation. Finally, we authorized the grant of tax certificates to incumbent fixed microwave licensees for any sale or exchange of property in connection with voluntary agreements for relocation concluded during the fixed two-year voluntary negotiation period.

7. In this Memorandum Opinion and Order, we address three petitions for reconsideration and clarification of the Commission's *Second R&O*[6] and nine petitions for reconsideration and clarification of the Commission's *Third R&O*.[7] With regard to the *Second R&O*, the petitioners address the following issues:

- the deadline of July 15, 1994, by which manufacture must cease manufacture or importation of microwave equipment that does not meet the new digital efficiency standards in bands above 3 GHz;
- use of alternate channels or frequency pairings;
- 4 GHz band channeling plan;
- use of the 6425-6525 MHz (6.4 GHz) Local Television Transmission Service (LTTS) band for general common carrier operations;
- technical issues that include maximum power limits, antennas standards, and automatic transmit power control (ATPC); and
- use of the 1710-1850 MHz government band for relocation of non-government fixed microwave facilities.[8]

8. The petitioners request that the Commission clarify or reconsider the following issues of the *Third R&O:*

- redefining the public safety fixed microwave facilities eligible for exemption from mandatory relocation;
- authorizing tax certificates only during the two-year voluntary negotiation period for licensed emerging technology services;
- permitting reaccommodation of incumbents within the 2 GHz bands;
- specifying that acceptance of applications for emerging technology services "triggers" the two-year voluntary negotiation period;
- using the government band adjacent to the 2 GHz band for relocating fixed microwave licensees; and
- applying the relocation rules to the 1970-1990 and 2160-2180 MHz bands.[9]

Finally, on our own motion, we reconsider whether public safety fixed microwave facilities should continue to be exempt from mandatory relocation if their spectrum is needed by an emerging technology provider.

DISCUSSION

Second Report and Order Issues

9. *Equipment Manufacturing Deadline.* In the *Second R&O,* to ensure efficient use, the Commission adopted minimum digital data rates for each channel bandwidth of the higher fixed microwave bands made available for relocation of incumbents. The Commission adopted a 3.5-year transition period ending June 1, 1997, after which all new equipment for these bands must meet the specified data rates. Further, to minimize the use of equipment that does not meet the new efficiency standards, the Commission prohibited the manufacture or importation of such equipment after July 15, 1994.[10]

10. In its petition for reconsideration, Digital Microwave Corporation (DMC) requests that the Commission eliminate the deadline of July 15, 1994, for the prohibition of the manufacture and importation of equipment that does

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[6] *Petition for Clarification or Partial Reconsideration* filed by Comsearch on October 22, 1993; *Petition for Partial Reconsideration* filed by Digital Microwave Corporation (DMC) on September 13, 1993; and *Petition for Partial Reconsideration* filed by Western Tele-Communications, Inc. (WTCI) on October 21, 1993.

[7] *Petition for Reconsideration* filed by Apple Computer (Apple) on September 13, 1993; *Petition for Reconsideration and Partial Clarification* filed by Association of American Railroads (AAR) on October 4, 1993; *Petition for Clarification and/or Reconsideration* filed by the American Association of State Highway and Transportation Officials Special Committee (AASHTO) on Communications on September 17, 1993; *Petition for Reconsideration* filed by AMSC Subsidiary Corporation (AMSC) on October 4, 1993; *Petition for Partial Reconsideration* filed by Forestry-Conservation Communications Association (FCCA) on October 4, 1993; *Petition for Clarification or Reconsideration* filed by Public Safety Communications Council (PSCC) on September 29, 1993; *Petition for Partial Reconsideration* filed by Public Safety Microwave Committee (PSMC) on October 4, 1993; *Petition for Clarification and/or Reconsideration* filed by Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management (UTAM) on October 4, 1993; *Petition for Clarification and/or Partial Reconsideration* filed by Utilities Telecommunications Council (UTC) on October 4, 1993.

[8] Reaccommodation of incumbents in the 1710-1850 MHz government band is addressed by petitions to both the *Second R&O* and the *Third R&O*. This issue will be addressed below in the *DISCUSSION* section under the *Third R&O*.

[9] UTAM in its reply comments at 6 requests that the Commission clarify that when unlicensed PCS interests pay to relocate a microwave licensee's facilities that operate in both the unlicensed band and another band, the emerging technology entities seeking to commence operations on the frequency cleared by the unlicensed PCS interests are expected to reimburse the unlicensed PCS interests a proportionate share of the relocation cost. This request responds to the PCS allocation within the emerging technology bands. This subject is within the scope of the PCS proceeding not this emerging technology proceeding. *See Second Report and Order,* GEN Docket No. 90-314, 8 FCC Rcd 7700 (1993).

[10] This deadline will not apply to equipment manufactured for export.

not meet the new efficiency standards.[11] DMC argues that this deadline was not addressed in this proceeding prior to the *Second R&O* and was not envisioned by the interested parties as part of the 3.5-year transition period that was agreed to by the manufacturers after difficult and lengthy deliberation. DMC claims that such a deadline will create an economic hardship for DMC because it recently introduced an entirely new product line designed to meet the requirements of the old rules. It states that considerable costs were involved with developing and marketing this new equipment and that it now faces significant job reductions and financial losses despite having acted in good faith in designing equipment that complies with existing FCC rules.

11. Both the Fixed Point-to-Point Communication Section of the Telecommunications Industry Association (TIA) and Harris Corporation - Farinon Division (Harris) support DMC's request that the manufacture and importation deadline of July 15, 1994, be eliminated.[12] Harris argues that this requirement effectively reduces the transition period from 3.5-years to ten months. It states that companies generally strive to keep inventories to a "zero" level in an effort to reduce costs, and therefore, that they effectively will have to halt sales of affected equipment on July 15, 1994. Harris asserts that manufacturers make substantial investments in R&D and establishment of production lines for new products in advance of actual sales and that the 3.5-year transition period is essential to recoup these investments.

12. Alcatel Networks Systems, Inc. (ANS) opposes DMC's request.[13] It argues that the Commission's timetable is fair, does not burden manufacturers, and that implementation of the July 15, 1994 cut-off is necessary to ensure that inefficient radios do not proliferate as available spectrum decreases. It claims that the deadline provides manufacturers more than adequate notice before production must stop. ANS claims that this deadline corresponds to the standard industry production cycle. In reply comments, Harris counters ANS's claims that there is not any typical product life cycle for the microwave industry and again argues that the July 15, 1994 cut-off date will harm microwave service users and manufacturers.[14]

13. The Commission adopted the more stringent data rate requirements and associated transition periods to promote efficient use of the bands above 3 GHz. These requirements ensure that there will be adequate spectrum in those bands to accommodate the incumbent fixed microwave users required to move from the 2 GHz bands and that adequate spectrum is available for fixed microwave growth.

14. We also were concerned, however, that manufacturers of equipment and users of these bands not be unduly burdened by our more efficient data rate requirements for new equipment. Our intent was to allow manufacturers to recoup some of their investment in the implementation of recent equipment that complies with our former rules. The 3.5-year transition plan was an attempt to balance these conflicting interests. Further, we believed the one-year deadline for the manufacture and importation of equipment that does not meet the new efficiency standards would permit manufacturers to meet the near-term equipment needs of users and exhaust inventories prior to the June 1, 1997 deadline.

15. We now are persuaded by the comments that the July 15, 1994 deadline may unduly burden those manufacturers that recently have developed products that comply with the old rules, particularly if the manufacturer maintains a low or "zero" inventory. While we continue to believe that the 3.5-year transition period is reasonable, after reviewing the comments we conclude that the "cut-off" of July 15, 1994, for the manufacture and importation of equipment that does not meet the new standards should be extended two additional years, to July 15, 1996. We will continue to require that all equipment applied for, authorized, and placed in service after June 1, 1997, meet the efficiency requirements adopted in the *Second R&O*. We believe that changing the one-year deadline will provide manufacturers flexibility in discontinuing product lines that do not meet the new standard but will maintain our goal to transition to more spectrum-efficient equipment within a reasonable time period.

16. *Frequency Pairing.* In the *Second R&O*, the Commission reallocated five bands above 3 GHz to the private operational and common carrier fixed microwave services on a co-primary basis and adopted specific channelization plans for each.[15] The Commission also adopted changes in Parts 21 and 94 of its rules that allowed variances to the channeling plans.[16] Specifically, we stated that "Fixed systems licensed, in operation, or applied for in the 6525-6875 and 10,550-10,680 MHz bands prior to July 15, 1993 are permitted to use channel plans in effect prior to that date, including adding channels under those plans.[17]

17. Comsearch addresses two issues regarding the channeling plans and variances to the plans.[18] First, it requests that the Commission administer the frequency pairings as preferred, but not mandatory. It argues that there are situations, such as long haul circuits, that require multiple frequencies in which other pairings may be more spectrum efficient than those listed. Comsearch argues that, at the least, language similar to Section 94.15(d) should be added to Part 21.[19] Second, Comsearch requests clarification of the kind of changes to a system that will be authorized under the old plans, as provided for in Sections 21.701(l) and 94.65(q). Specifically, it asks if new paths which connect to an existing system will be allowed to use the old channeling plan used by the existing system and how the Commission will resolve situations in which interference from the surrounding environment requires use of the old channel plans.

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[11] DMC petition at 2, note 6 *supra*.
[12] TIA at 1 and Harris at 2.
[13] ANS at 3.
[14] Harris reply at 3.
[15] The frequency bands reallocated are: 3.7-4.2 GHz (4 GHz); 5.925-6.425 GHz (lower 6 GHz); 6.525-6.875 GHz (upper 6 GHz); 10.565-10.615/10.630-10.680 GHz (10 GHz); and 10.7-11.7 GHz (11 GHz).
[16] *See* 47 C.F.R. §§ 21.701(l) and 94.65(q).
[17] *Second Report and Order, supra* note 2 at 62.
[18] Comsearch petition, *supra* note 6 at 4.
[19] The language from Section 94.15(d) to which Comsearch refers is as follows: "... Operations on other than the listed frequencies may be authorized where it is shown that the objectives or requirements of the interference criteria prescribed in Section 94.63 could not otherwise be met to resolve the interference problems." ...

18. Comsearch's request that the new frequency pairings not be mandatory was supported by ANS and Pacific Bell and Nevada Bell (PB/NB).[20] PB/NB argues that the existence of operations using the old frequency pairings in the same spectrum block will result in situations in which the new mandatory pairings cannot be used.

19. We believe that using the adopted frequency pairings will facilitate efficient use of the spectrum. However, we recognize that there will be locations, especially in congested areas, where new links cannot be coordinated if the new frequency pairings are used but which could be coordinated if a frequency pair inconsistent with the new rules could be used. Therefore, we will consider on a case-by-case basis authorizing frequency pairings inconsistent with the rules upon a significant showing that the adopted frequency pairing plan would preclude the requested link. Additionally, we will include language in Section 21.701(m) similar to Section 94.15(d) to provide for these unique situations. We again encourage use of the new frequency plan wherever possible because its use generally will provide for the most efficient use of the spectrum. However, as already provided in our Rules, systems existing in the subject bands prior to July 15, 1993, may modify existing links and add new links under the old frequency pairing plans.[21]

20. *4 GHz Band Channeling Plan.* In the *Second R&O,* the Commission concluded that the existing 20 MHz channeling plan for the 4 GHz band, 3.7-4.2 GHz, should not be modified. This decision was made to protect existing satellite operations that share this band with the point-to-point fixed microwave service. However, the Commission did authorize private fixed microwave licensees in addition to common carrier licensees to use the band under the current channeling plan. Unfortunately, the channeling plan published in the Appendix of the *Second R&O* inadvertently reflected a 280 MHz separation between transmit and receive frequencies, and this error understandably has caused some confusion on the part of the commenters.

21. In their respective petitions, Comsearch and Western Tele-Communications, Inc. (WTCI) request that the Commission clarify its intent with regard to the 4 GHz band.[22] They note the inconsistency between maintaining the 20 MHz channeling plan and adopting a 280 MHz separation between transmit and receive channels instead of the 20 MHz separation provided in the old interleaving channel plan. Comsearch further suggests that our common carrier rules be modified to include the 4 GHz band so that existing licensees would be grandfathered and not have to modify their operations. WTCI states that the channeling plan would require existing licensees to change their equipment, resulting in unnecessary cost, further coordination, and interference difficulties with respect to satellite operations and it requests that the old channeling plan be reinstated.

22. PB/NB support Comsearch and WCTI.[23] However, ANS opposes modification of the 4 GHz channelization plan. It argues the channeling plan published in the Appendix of the *Second R&O* must be retained because it is consistent with new system requirements and with all other microwave frequency plans.[24]

23. In the *Second R&O,* we concluded that the existing 20 MHz channel plan should not be modified. We made this decision so that the currently licensed satellite operations that share this band would not be subject to the potential of interference from fixed microwave operations. However, the rules section of the *Second R&O* did not correspond with the text of the *Second R&O.* We will, therefore, correct the channeling plans to reflect the original 20 MHz separation between transmit and receive frequencies.[25]

24. With regard to ANS's support of the 280 MHz separation, we continue to believe that the 20 MHz separation should be maintained. The 280 MHz separation would increase the potential of interference from fixed microwave operations to the currently licensed satellite operations sharing this band. Further, it is not clear from ANS's comments why they believe that the 20 MHz separation is inconsistent with the other channeling plans. Therefore we are denying ANS's request.

25. *6425-6525 MHz Band.* The 6425-6525 MHz band currently is allocated to the fixed service and is used for common carrier Local Television Transmission Service (LTTS), which is used to provide Electronic News Gathering (ENG), television remote pick-up, and non-broadcast video services. In its petition, WTCI requests that the Commission issue a Further Notice of Proposed Rule Making to allocate the 6425-6525 MHz band for general common carrier use.[26] WTCI argues that this band is lightly used and vacant in many areas and that there is no reason to continue reserving this 100 MHz of spectrum for LTTS. ANS supports WTCI's request to allocate additional spectrum for microwave use.[27] PB/NB opposes the request, arguing that the LTTS band provides a useful service that will be destroyed if the current restrictions on the band's use are removed.[28] PB/NB argue that the band is used extensively and that sharing is not possible because the nature of the LTTS service requires that links be established in a matter of hours. According to PB/NB, this short notice requirement does not allow for the extensive prior coordination which would be required if other fixed microwave operations were allowed in the band. Further, PB/NB claim that, if the band is authorized for general fixed microwave use, it will become saturated and will preclude LTTS use.

26. We believe that the LTTS provides a useful service and that sharing this band with fixed microwave operations would significantly restrict the usefulness of this band for LTTS operations. Further, we believe that the five bands we have provided in this proceeding will accommodate both incumbent fixed microwave operations that must be relocated from the 2 GHz bands and future fixed micro-

[20] ANS at 8 and PB/NB at 1.
[21] *See* 47 C.F.R. §§ 21.701(l), 94.65(q).
[22] WTCI petition at 7 and Comsearch petition at 5, note 6 *supra.*
[23] PB/NB at 2.
[24] ANS at 6.
[25] 47 C.F.R. §§ 21.701(d), § 94.65(g).
[26] WTCI petition, *supra* note 6 at 5.
[27] ANS at 5.
[28] PB/NB at 3.

wave growth. Consequently, we will not initiate a Further Notice of Proposed Rule Making proposing to reallocate this band for general common carrier and private fixed microwave use at this time.

27. *Other Technical Issues.* Our purpose is to facilitate the relocation of incumbent fixed microwave operations that must relocate from the 2 GHz fixed microwave bands, not to address the technical standards governing fixed microwave operations generally. However, in reallocating the five bands to the private operational and common carrier fixed microwave services on a co-primary basis it was necessary to adopt technical rules to govern their use. Therefore, where necessary the Commission proposed and adopted standards for maximum authorized power, antenna standards, and automatic transmit power control (ATPC). The Commission stated in the *Second R&O* that it currently is reviewing the technical rules in Parts 21 and 94 and in the near future anticipates issuing a proposal to update and consolidate these rules.

28. In its petition, Comsearch requests the Commission to reconsider the maximum power authorized in the 4 GHz, 10 GHz, and 11 GHz bands and the antenna standards for the 6 GHz band.[29] WTCI requests that we reconsider the ATPC rules and allow for up to a 10 decibel (dB) increase in power, instead of the 3 dB adopted.[30] Both petitions are supported by ANS.[31]

29. In this proceeding we have made minimal changes to existing technical standards, all of which we believe are necessary to allow for the immediate implementation of fixed microwave service in the subject bands. We agree with the petitioners that the technical rules governing fixed microwave operations in these bands should be reviewed and updated to reflect advances in technology as well as recent changes in our regulatory structure. However, we believe these issues are best addressed in a proceeding dedicated to that purpose rather than being addressed in piecemeal fashion in this and other proceedings. Therefore, we are deferring consideration of technical issues regarding maximum authorized power, antenna standards, and ATPC to a future proceeding, to be initiated shortly.

Third Report and Order Issues

30. *Public Safety Exemption.* In the *First R&O,* the Commission exempted licensees of incumbent public safety facilities from involuntary relocation. In the *Third R&O,* we clarified the definition of public safety. The Commission's purpose in each decision was to ensure that essential safety of life and property communications services are not disrupted or otherwise disadvantaged.

31. In response to the *First R&O,* Apple Computer (Apple) and Rolm stated that allowing public safety facilities to remain in the band allocated to the provision of unlicensed devices would severely handicap, if not prohibit, implementation of unlicensed devices in these bands.[32] They argued that all incumbent facilities, including public safety, should be subject to relocation.

32. In response to the petitions for reconsideration of the *Third R&O,* American Personal Communications (APC) notes that public safety microwave paths comprise a large percentage of incumbents in major markets.[33] Similarly, Cox notes that in the Los Angeles MTA 25 percent of the incumbent microwave facilities appear to be licensed to governmental entities including public safety entities.[34] Cox argues that a 20 or 30 MHz allocation to each PCS licensee may prove inadequate for the introduction of PCS because of the public safety exemption. Cox claims that licensees may be unable to deploy PCS if they do not succeed in relocating a significant number of microwave incumbents. Both APC and Cox emphasize that relocation is not punitive or unfair. They note that incumbent licensees will not have to relocate unless requested to do so by an emerging technology licensee that will pay all costs of relocation. These parties note that no relocation will be required unless communications equal to or better are provided the current licensee at no cost and with no disruption to communications.

33. Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management (UTAM) also expresses concern that voluntary relocations by exempt licensees likely will require payment above actual relocation costs. UTAM states that unlicensed PCS equipment manufacturers are particularly vulnerable to excessive demands because complete clearing of the band is required before nomadic devices can be deployed. UTAM concludes that delays in reaching voluntary relocation agreements with exempt microwave licensees will result in delays in unlicensed PCS deployment.[35]

34. On our own motion, upon reconsideration, we conclude that it would be in the public interest to subject all incumbent facilities, including public safety, to mandatory relocation if an emerging technology provider requires the spectrum. Of particular concern is providing adequate spectrum for operation of licensed services in major urban areas where there are a large number of incumbent public safety fixed microwave facilities and for operation of unlicensed PCS devices. It has been recognized by incumbent fixed microwave and PCS interests alike that it will not be possible for PCS and fixed microwave to operate in the same geographic area on the same frequency without interfering with each other. Upon review, and after considering these additional comments, we are now convinced that PCS service may be precluded or severely limited in some areas unless public safety licensees relocate. In this regard, in previous decisions, we believe that we underestimated the difficulty that PCS will have in sharing spectrum with the incumbent public safety licensees. Allowing all public safety facilities to remain in the band indefinitely would defeat our primary goal in this proceeding of providing usable spectrum for the implementation of emerging technologies.

35. We believe that certain public safety entities warrant special consideration because previously they have been excluded from involuntary relocation and because of the

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[29] Comsearch petition, *supra* note 6 at 2.
[30] WTCI petition, *supra* note 6 at 8.
[31] ANS at 6.
[32] Apple, Comments to the *Third Notice of Proposed Rule Making* at 5-7; Rolm Comments to the *Third Notice of Proposed Rule Making* at 2-3.
[33] APC at 12-13.
[34] Cox at 6-9.
[35] UTAM at 11-12.

sensitive nature of their communications. Therefore, we are adopting for the public safety entities previously exempt, a relocation plan consisting of a four year voluntary negotiation period followed by a one-year mandatory negotiation period.[36] This policy, summarized below, will not disadvantage incumbent public safety operations required to relocate.[37]

- All relocation costs will be paid entirely by the emerging technology licensee. These costs include all engineering, equipment, and site costs and FCC fees, as well as any reasonable additional costs.
- Relocation facilities must be fully comparable to those being replaced.
- All activities necessary for placing the new facilities into operation must be completed before relocation, including engineering and frequency coordination.
- The new communications system must be fully built and tested before the relocation itself commences.
- Should the new facilities in practice prove not to be equivalent in every respect, within one year the public safety operation may relocate back to its original facilities and stay there until complete equivalency (or better) is attained.

36. *Public Safety Definition.* In the *Third R&O*, we clarified the definition of public safety licensees operating 2 GHz facilities that would receive special treatment in the relocation process. The facilities within this exception were defined as those Part 94 facilities licensed on a primary basis under Section 90.19 Police Radio Service; Section 90.21 Fire Radio Service; Section 90.27 Emergency Medical Radio Service; and Subpart C of Part 90, Special Emergency Radio Services; and on which a majority of communications are used for police, fire, or emergency medical services operations involving safety of life and property. Additionally, licensees of other Part 94 facilities licensed on a primary basis under the eligibility requirements of Part 90, Subparts B and C, may request similar special treatment upon demonstrating that the majority of the communications carried on those facilities are used for operations involving safety of life and property. Our purpose in providing special treatment in the relocation process to some licensees was to ensure that essential safety of life and property communications services are not disrupted.

37. In their respective petitions, American Association of State Highway and Transportation Officials Special Committee on Communications (AASHTO), Public Safety Communications Council (PSCC), Public Safety Microwave Committee (PSMC), and Forestry-Conservation Communications Association (FCCA) contend that the Commission adopted an overly narrow definition of "public safety." The petitioners argue that the Commission should reconsider its decision to exclude facilities licensed to local governments if the majority of their communications are not used for police, fire, or emergency medical operations involving safety of life and property.[38] The petitioners claim that all operations currently listed under Part 90, Subpart B, including highway maintenance operations, forestry-conservation and other local government operations, support operations that deal with safety of life and property. The petitioners claim that the Commission has created an artificial distinction among public safety systems by assigning different levels of importance to such systems and that all applicants eligible under Part 90, Subpart B, should be treated the same because the vast majority of licensees in both groups are state or local governments responsible for providing safety of life and property services.

38. In comments to the petitions, the Association of Public-Safety Communications Officials-International (APCO) and Utilities Telecommunications Council (UTC) support broadening the definition.[39] On the other hand, a number of proponents of Personal Communications Services (PCS) oppose changing the definition of public safety. They state that changing the definition to include more facilities will increase relocation costs and delay implementation of PCS.[40] These parties argue that the rules already ensure that existing systems are fully protected by our requirement that incumbent licensees will have all relocation costs paid by the PCS licensees.[41] Apple and UTAM also express concerns with implementation of unlicensed PCS operations. They argue that because the sale of many unlicensed devices must be delayed until the unlicensed band is cleared of existing operations, expanding the definition of public safety entities will delay the introduction of unlicensed devices.[42]

39. In reply comments, PSMC states that those opposing its petition have overstated the impact of broadening the definition to include all state and local government licensees.[43] It claims that most local government communications systems are used for protection of life and property, and that the Commission's narrow definition of public safety will generate unnecessary disputes and have a negative impact on 2 GHz government microwave facilities, which represent only a small minority of all such facilities.

40. As discussed in the *Third R&O*, facilities licensed to entities eligible under Part 90, Subpart B, provide communications for a variety of different services. We concluded that the facilities to be afforded special treatment should be narrowly defined and limited to only those facilities on which a majority of communications are used for police, fire, or emergency medical services operations involving

[36] The five year relocation plan applies to all public safety facilities as defined both in spectrum allocated for licensed services and allocated for unlicensed devices. The voluntary period will start with the Commission's acceptance of applications from emerging technology providers and the mandatory period will start at the request of the emerging technology provider.

[37] The obligations of the emerging technology provider when relocation is involuntary are set out in the *First R&O, supra* Note 1 at 12.

[38] *See Petitions* of AASHTO at 2, PSCC at 2, PSMC at 1, and FCCA at 2, note 7 *supra*.

[39] APCO at 1 and UTC at 11.

[40] American Personal Communications (APC) at 11 and Cox Enterprises, Inc. (Cox) at 2.

[41] Telocator at 5.

[42] Apple at 1 and UTAM at 10.

[43] PSMC Reply at 2.

safety of life and property. We found that public safety and special emergency radio service operations that do not meet this criterion do not warrant special treatment.

41. We continue to believe that special treatment in the relocation process should be reserved for only those facilities as we have defined them. Special treatment in the relocation process for facilities that provide only limited communications for safety of life and property would negatively impact implementation of services employing new technologies. Again we note that all incumbent licensees required to relocate have adequate safeguards to protect their operations. The requirements for relocation ensure that relocated entities will be provided with comparable facilities permitting equivalent communications services at no cost to the existing licensees and that such facilities will be provided without any disruption of service. We are according special treatment, in the form of an extended voluntary relocation period, only to those licensees within the definition adopted in the *Third R&O*, which we hereby affirm. Accordingly, we will maintain our definition of public safety facilities subject to the extended relocation period addressed above.[44]

42. *Tax Certificates.* In the *Third R&O*, the Commission authorized the grant of tax certificates for any sale or exchange of property made in connection with voluntary agreements to relocate fixed microwave facilities during the designated two-year period for voluntary negotiations between incumbents and emerging technology providers.

43. Apple, Association of American Railroads (AAR), UTAM, and UTC all request that the Commission expand its tax certificate policy so that it applies equally to both licensed and unlicensed PCS.[45] UTAM states that the one-year mandatory negotiation period for incumbents in spectrum allocated for unlicensed PCS operations appears to exclude incumbent licensees from eligibility for tax certificates.[46] It argues that the incentive of tax certificates may serve as an inducement for early relocation in the bands that need to be cleared as expeditiously as possible to allow for the implementation of unlicensed PCS devices.

44. In addition, UTC states that the adopted policy is unfair to incumbent licensees that are located in bands or areas of the country where emerging technologies do not develop during the initial two-year negotiation period.[47] Therefore, it argues that tax certificates should be awarded for any voluntary agreements entered into during both the initial two-year period and the one-year mandatory negotiation period. AAR argues that all incumbent licensees forced to relocate, no matter when or regardless of from which band, should be eligible to receive tax certificates.

45. There is broad support in the comments for authorizing the grant of tax certificates to incumbents that enter into voluntary agreements during the mandatory one-year negotiation period that are licensed in spectrum allocated for unlicensed devices or in geographic areas where emerging technologies do not develop in the initial two-year period in spectrum allocated for licensed services.[48] Only APC opposes any change from the current policy. Specifically, APC argues that our rules already provides incumbents full compensation for relocation and that the tax certificates should not be made a part of this compensation, but instead should be used as a reward for incumbents that reach agreement during the voluntary negotiation period.[49] APC claims that, if tax certificates are granted beyond the voluntary negotiation period, there will be no added incentive to reach agreement in a timely manner and expedite the deployment of PCS.

46. In the *Third R&O*, we authorized the grant of tax certificates to further our policy of encouraging voluntary agreements to relocate fixed microwave facilities during the initial two-year period. However, we agree with the commenters that tax certificates should be used to facilitate incumbent relocation from the unlicensed band and in geographic areas that are not developed by emerging technologies within the two-year voluntary negotiation period. Accordingly, we are modifying our policy to authorize the grant of tax certificates to incumbent fixed microwave operators that negotiate voluntary agreements during either the voluntary or mandatory negotiation period. We will not grant tax certificates to incumbents forced to relocate or that reach agreements after the mandatory negotiation period. We agree with APC that tax certificates should be used as an incentive to encourage the early relocation of fixed microwave facilities. This policy as modified will facilitate voluntary agreements, which in turn will facilitate the implementation of both licensed and unlicensed PCS.

47. *In-band Retuning.* In the *Third R&O*, the Commission adopted a policy of generally not permitting incumbent microwave operations to relocate within the 2 GHz band. While such relocation could be accomplished in many cases by making modifications to the incumbents' existing equipment, such as retuning it to another nearby frequency, we concluded that allowing relocation within the band for other fixed microwave facilities would not be in the public interest because in most cases the incumbent licensee eventually would be required to move to another band. Any such intervening relocation would increase the overall cost of relocating the incumbent fixed microwave facilities; increase the cost to licensed emerging technology providers by increasing the number of fixed microwave facilities that they may have to pay to relocate; and burden

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[44] We are aware that some fixed microwave operators unreasonably may refuse to enter into relocation agreements and instead delay provision of emerging technology services by requiring Commission consideration of their specific circumstances. We note that the Commission has a number of means at its disposal to discourage such actions when a request for mandatory relocation is before it. For example, in an egregious case of non-cooperation we could consider requiring the emerging technology provider to pay less than the full cost of relocation, or even none of the cost. Inasmuch as when a case is referred to us for decision the total agreement would be subject to our decision, we believe parties have a clear incentive to voluntarily reach reasonable agreements.

[45] AAR also requests clarification on how the tax certificates will operate if the incumbent licensee uses only a portion of the payment to relocate its facilities. The Commission will grant tax certificates to facilitate implementation of its policy. The tax certificates will be for the full value of the compensation received. However, we note that the tax certificates will be subject to all applicable regulations of the Internal Revenue Service.

[46] UTAM petition at 3, note 7 *supra*.

[47] UTC petition at 6, note 7 *supra*.

[48] American Telephone and Telegraph Company (AT&T) at 8 and MCI Telecommunications Corporation (MCI) at 5.

[49] APC at 18.

incumbents with two relocations instead of one. However, recognizing the need of public safety licensees not to disrupt essential safety of life and property communication services, we authorized relocation within the 2 GHz band for incumbent public safety facilities upon an adequate showing that such a relocation will not adversely affect the operations of the public safety incumbent, or any other fixed microwave incumbent or emerging technology/PCS licensee.

48. Apple requests that the Commission reconsider its decision not to permit general in-band retuning of incumbent facilities or, at a minimum, to permit such retuning among parties who so desire it.[50] Apple states that providing the option of retuning is vital to the prompt development of unlicensed PCS devices because unlicensed data-PCS cannot share spectrum with fixed microwave operations without causing interference to incumbent facilities. Thus, it claims that the entire unlicensed band will have to be cleared before unlicensed data-PCS devices may be implemented. Unless the Commission allows retuning, Apple argues the cost of clearing the band could preclude the development of data-PCS and other nomadic technologies. It claims that the cost of retuning is small in comparison to the cost of relocating to another band and that retuning would not burden the incumbents because they would have essentially the same facilities with comparable reliability. Further, it argues that the party that pays initially for the incumbent facilities to be retuned should be responsible for any future required relocations to other bands. Apple also requests that if the Commission does not allow for retuning of incumbent facilities without restriction, it should at least permit retuning in appropriate circumstances by parties who desire it and not restrict the option of retuning to public safety incumbents.

49. Further, Apple requests that when consent is required to retune a public safety facility from the unlicensed band that such consent should not be allowed to be withheld unreasonably. It argues that only one holdout could delay or destroy the introduction of nomadic unlicensed devices. Finally, Apple requests the Commission to designate a specific date one year after the close of the mandatory negotiation period by which all microwave incumbents will be relocated from the unlicensed band and also to adopt a dispute resolution process that will resolve all disputes within six months of the close of the mandatory negotiation period. It argues that the current relocation process is open-ended and that it may take years to resolve any appeals of involuntary relocations.

50. Apple's retuning proposal is strongly opposed by several commenters.[51] American Telephone and Telegraph Company (AT&T) and UTC argue that Apple does not provide any new facts or arguments that would justify reconsideration. Rather, according to these parties, Apple merely raises claims that have already been considered and rejected by the Commission.[52] MCI states that Apple has not demonstrated the feasibility of its plan to "repack" the 1850-1990 MHz band.[53] Specifically, it states that no demonstration has been made that any significant portion of the existing 2 GHz radios is capable of being retuned. Cox argues that Apple's approach is impractical and fails to take account of the chain reaction that retuning would have on microwave licensees that might otherwise be undisturbed.[54]

51. APC, Cox and MCI state that even if retuning were demonstrated to be feasible, it would further encumber the licensed PCS band, cause delay, increase the cost of implementing licensed PCS services, and expose incumbent microwave licensees to a two-step relocation process. They claim that it would be inefficient to move microwave incumbents to other portions of the 2 GHz frequency band when they must ultimately relocate elsewhere. Cox also argues that even if the entity that pays for retuning the incumbent's facility remains responsible for any subsequent out-of-band moves, the intermediate step would still increase the overall transition cost and delay the implementation of PCS.

52. UTAM supports Apple's request for consensual retuning in appropriate circumstances.[55] Specifically, it contends that when all interested parties reach a satisfactory, voluntary agreement to retune microwave facilities as either an interim or permanent measure, the public interest would be served by allowing that agreement to be effectuated. API supports retuning only in cases in which permanent 2 GHz government spectrum is available.[56]

53. APC states that Apple's request that the Commission adopt a "reasonableness" standard for granting retuning consent by the incumbent or the affected PCS licensee is unworkable.[57] It argues that Apple offers no solutions as to what constitutes reasonableness, how a reasonableness showing could be made, or how to resolve disputes concerning these matters. In reply comments, Apple argues that the Commission, or an arbitrator or mediator, could assess the rejection of the retuning proposal in light of the basic principles governing relocation, such as technical comparability, cost, and interference posed by the relocation.[58]

54. In response to Apple's request that the Commission set a specific date by which incumbents in the unlicensed bands would be required to be retuned or relocated and adopt a dispute resolution process, UTC states that the Commission has established a mechanism to promote use of marketplace forces in the transition of these bands to emerging technologies and has set strict timetables for both voluntary and mandatory negotiations. Therefore, UTC urges, the procedures requested by Apple are unnecessary.[59] Further, it argues that Apple's suggestion that all microwave incumbents be required to be relocated one year after the mandatory negotiation period is un-

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[50] Apple petition at 3, note 7 *supra*. Apple filed a separate "Emergency Petition," in GEN Docket 90-314, that addresses related issues such as the amount of spectrum to be allocated to unlicensed PCS, how that spectrum should be divided among unlicensed PCS devices, and implementation of unlicensed PCS. These issues will be addressed in GEN Docket 90-314.

[51] APC at 2, American Petroleum Institute (API) at 7, AT&T at 1, Cox at 8, MCI at 2, and UTC at 12.

[52] AT&T at 3 and UTC at 12.

[53] MCI at 2.

[54] Cox at 8.

[55] UTAM at 13.

[56] API at 7.

[57] APC at 9.

[58] Apple reply at 5.

[59] UTC at 6-8.

reasonable because it would be virtually impossible to complete negotiations with all the licensees in the spectrum designated for unlicensed operations in one year.

55. The Commission's primary goals in this proceeding are to provide usable spectrum for emerging technologies in a timely manner and to provide for reaccommodation of incumbent operations when necessary with a minimum of disruption to those operations. We believe that it is possible for some degree of sharing to exist between emerging technologies and fixed microwave operations in these bands, particularly as emerging technologies are developing. However, we believe that in the long term these bands will be required primarily for emerging technologies, particularly in urban areas. Therefore, it is inconsistent with our goals, as a general policy, to encourage new or relocated fixed microwave use of these bands. Specifically, we believe that retuning in general will be detrimental to our goals, because most retuned fixed microwave facilities ultimately would be required to move to another band. In these cases, retuning would increase the overall cost of relocating the incumbent fixed microwave facilities; it would increase the number of fixed microwave facilities that other emerging technology providers would have to relocate, which would delay implementation of service in the band to which the incumbent facility was temporarily moved to; and it would burden incumbents with two relocations instead of one. Further, in cases where the current equipment is incapable of being retuned, it would be necessary to purchase new equipment, which would result in little saving of time or money in the relocation process. Therefore we will not mandate relocation within the 2 GHz band.

56. We believe, however, that some retuning may be possible, particularly in rural areas where all of the spectrum allocated for emerging technologies may not be needed. We believe that allowing such retuning would facilitate the clearing of spectrum in these cases and that such clearing may lead to quicker implementation of PCS services in these bands. Therefore, we will allow relocation within the 2 GHz band where all interested parties agree to the retuning of the incumbent's facilities. "All interested parties" includes the incumbent licensee, the emerging technology provider or representative requesting and paying for the relocation, and any emerging technology licensee of the spectrum to which the incumbent's facilities are to be retuned.

57. We are concerned, however, about requiring the entity that requests and pays for the retuning to remain responsible for any subsequent relocation to other spectrum as suggested by Apple. Specifically, we are concerned that adopting such a policy may be difficult or impossible to enforce, particularly if the entity requesting and paying for the original relocation goes out of business before any subsequent moves are required. Further, we are concerned that such a policy may create an incentive to the emerging technology provider assigned the spectrum to which the incumbent's facilities were moved to relocate unnecessarily the incumbent's facilities a second time because the cost would be born by the original entity requesting the move. We believe that a better policy would be for the affected parties themselves to agree upon responsibility for any future moves in the relocation agreements. For example, either the emerging technology provider that requested the original relocation, the emerging technology licensee on the spectrum to which the fixed microwave facilities will be relocated, or the fixed microwave licensee could pay for any future relocations. This approach would leave to the parties to the retuning the responsibility to determine the allocation of costs for any future move by the incumbent, should the need arise. Further, we are prohibiting any retuning to emerging technology spectrum that is not yet allocated to a specific new service, specifically, the 1970-1990, 2110-2130, and 2160-2180 MHz bands.

58. We will not adopt a specific date for the relocation of all incumbent facilities from the unlicensed band as requested by Apple. We believe that the relocation framework adopted in this proceeding is sufficient to allow for a timely relocation of the incumbent facilities from the unlicensed bands. However, if it becomes apparent that additional measures are required by the Commission to facilitate the implementation of unlicensed PCS we will reconsider this decision at that time.

59. *Initiation of the two-year voluntary negotiation period.* In the *Third R&O*, we stated that the fixed two-year period for voluntary negotiations will commence with our acceptance of applications for emerging technology services and the one-year mandatory negotiation period for unlicensed spectrum will commence when an unlicensed equipment supplier or representative initiates a written request for negotiation with a specific licensee.

60. AAR and UTC request clarification as to when the two-year negotiation period commences for the various spectrum blocks and markets to be served by emerging technologies.[60] UTC notes that 60 MHz of spectrum, the 1970-1990, 2110-2130, and 2160-2180 MHz bands, were not designated for PCS. UTC argues that commencement of a voluntary negotiation period for this spectrum should not be tied to acceptance of applications for PCS and requests clarification that the triggering event for the two-year voluntary negotiation period is the acceptance of the formal requests for frequency assignment and licensing that occurs after the selection of tentative licensees. UTC claims this clarification is necessary to spare incumbent licensees the inconvenience of engaging in futile negotiations with unsuccessful emerging technology license applicants.

61. API and MCI generally support AAR and UTC's request.[61] API claims the current rules could eliminate opportunity for voluntary negotiations and argues that the voluntary negotiation period should commence on the date of acceptance of requests for frequency assignment and licensing in each specific market following the selection of tentative licensees. MCI proposes that the starting date for the voluntary negotiation period be the date a public notice is issued by the Commission announcing "tentative selectees" for a given PCS service area and frequency block. APC and Cox oppose the requests, stating that the starting time for the two-year negotiation period should remain the same as when competitive bidding applications are accepted.[62] They argue that waiting until licenses have been awarded will delay the clearing of the allocated bands. APC argues that the competitive bidding process will en-

[60] AAR petition at 5 and UTC petition at 3, note 7 *supra*.
[61] API at 4, MCI at 5, and AAR Reply at 2.
[62] APC at 14 and Cox at 11.

sure that only qualified and serious parties apply for PCS licenses and that PCS applicants will have the incentive to negotiate meaningful and serious agreements.

62. Apple takes no position on initiating the two-year voluntary period but requests the Commission to clarify that if providers of unlicensed PCS products need to relocate facilities from the bands allotted for licensed service due to potential adjacent channel interference, the one-year mandatory negotiation period applicable to unlicensed service, rather than the two-plus-one year period applicable to licensed services, should govern the relocation.[63]

63. The transition framework adopted in this proceeding attempts to balance the need to provide usable spectrum for emerging technologies as quickly as possible against causing disruption to the incumbent operations. We believe the two-tier negotiation process provides incumbents with adequate protection in the relocation process, even in rural areas where spectrum may not be required immediately for emerging technologies. Therefore, we continue to believe that in order to facilitate the implementation of PCS in a timely manner, the two-year voluntary negotiation period should begin in all areas upon the receipt of applications for the emerging technology service. However, to avoid ambiguity as to the exact date on which the voluntary negotiation period will begin, we will issue a public notice specifying this date. We also note that this period is for voluntary negotiations, and therefore that incumbents are not required to negotiate until licensees have been designated if they so choose.

64. With regard to Apple's request to clarify which negotiation period is applicable when it is necessary for a PCS licensee or representative of the unlicensed devices to negotiate with a fixed microwave licensee whose operations are in spectrum adjacent to that of the PCS provider, we conclude that the transition schedule of the entity requesting the move will apply.[64] For example, if a representative for unlicensed devices needs to relocate a fixed facility that is operating in spectrum allocated for licensed PCS, the transition schedule for spectrum allocated for unlicensed devices (one-year involuntary) will apply.

65. *Relocation to the 1710-1850 MHz Government band.* In the *Third R&O,* we stated that our staff is working with the National Telecommunications and Information Administration (NTIA) to establish procedures to accommodate in the adjacent government fixed band at 1710-1850 MHz those non-government 2 GHz fixed microwave facilities that technically cannot be accommodated in higher bands. We noted that NTIA has agreed to provide limited, conditional access to government spectrum on a case-by-case basis.

66. AAR states that relocating incumbent facilities to the 1710-1850 MHz government band is in the best interest of both incumbents and PCS providers.[65] Therefore, it requests the Commission to urge NTIA to make 50 MHz of spectrum available for relocation of incumbent facilities as part of the 200 MHz of government spectrum which NTIA is required to make available for non-government use by the Omnibus Budget Reconciliation Act of 1993.[66] AAR's proposal is supported by Apple, MCI, and PSMC.[67]

67. The Commission's staff is continuing to work with NTIA to make government spectrum available for relocation of existing 2 GHz operations. Further, we believe NTIA will make a good faith effort to accommodate as many as possible of the links recommended for relocation by the Commission. We will request that special consideration be given to reaccommodating links that are technically difficult to accommodate elsewhere, including those that operate in bands allocated for unlicensed services, those of public safety services, and those that require long paths.

68. *Implementation of the Relocation Rules in the 1970-1990 and 2160-2180 MHz Bands.* AMSC Subsidiary Corporation (AMSC) requests that the relocation rules adopted in this proceeding not apply to the 1970-1990 and 2160-2180 MHz bands. AMSC states that these bands were allocated internationally at the 1992 World Administrative Radio Conference to the mobile satellite service (MSS) and plans to petition to have them allocated to MSS domestically in the near future. AMSC argues that the relocation rules adopted in this proceeding were developed for local markets and terrestrial technologies and that they may not be feasible for MSS, which operates nationwide or, in some cases, worldwide.

69. This proceeding establishes relocation rules for the emerging technologies bands and does not address what types of services should be authorized in these bands. Other rule making proceedings, such as 2 GHz PCS, address specific services. Thus, AMSC's request is beyond the scope of this proceeding and therefore is not being adopted but may be considered in a later proceeding that addresses MSS.

PROCEDURAL MATTERS

70. *Ordering Clauses.* Accordingly, IT IS ORDERED, that the petitions for clarification or reconsideration filed to the *Second R&O* by Comsearch, Digital Microwave Corporation, and Western Tele-Communications, Inc. and the petitions for clarification or reconsideration filed to the *Third R&O* by the American Association of State Highway and Transportation Officials Special Committee on Communications, Public Safety Communications Council, Public Safety Microwave Committee, Forestry-Conservation

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[63] Apple at 5.

[64] *See Second Report and Order* in GEN Docket No. 90-314, note 108, 8 FCC Rcd 7700 (1993).

[65] In response to the *Second R&O,* WTCI argues in its petition for reconsideration that use of the 1710-1850 MHz band to reaccommodate incumbents should be encouraged, as the cost to modify existing 2 GHz facilities to this band would be minimal and could be accomplished expeditiously.

[66] Pursuant to the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 enacted on August 10, 1993, the Secretary of Commerce must identity and transfer to the Commission not less than 200 megahertz of government spectrum for non-government use. All of the spectrum to be transferred must be below 5 GHz, and one-half must be below 3 GHz; not less than 50 megahertz of the 200 megahertz must be recommended for immediate reallocation within six months of enactment, 25 megahertz of which must be below 3 GHz. NTIA made its initial spectrum recommendation on February 10, 1994, *see* U.S. Department of Commerce, *Preliminary Spectrum Reallocation Report* (Special Publication 94-27, February 1994)

[67] Apple at 3, MCI at 2, and PSMC reply at 3.

Communications Association, Association of American Railroads, Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management, Utilities Telecommunications Council, Apple Computer, and AMSC Subsidiary Corporation ARE GRANTED to the degree stated above and are DENIED in all other respects.

71. Further, IT IS ORDERED, that Parts 21, 22, and 94 of the Commission's Rules and Regulations ARE AMENDED as specified in the Appendix, effective 30 days after publication in the Federal Register. This action is taken pursuant to Sections 4(i), 7(a), 303(c), 303(g), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(g), and 303(r).

72. IT IS FURTHER ORDERED, that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Appendix: Final Rules

I. Part 21 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 21 - DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation in Part 21 continues to read:

AUTHORITY: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

2. Subpart B is amended by revising Sections 21.50(a) and 21.50(b) to read as follows:

§ 21.50 Transition of the 2.11-2.13 and 2.16-2.18 GHz bands from Domestic Public Fixed Radio Services to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies (ET Licensees) may negotiate with Domestic Public Fixed Radio Service licensees (Existing Licensees) in these bands for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to other fixed microwave bands or to other media, or alternatively, would accept a sharing arrangement with the ET Licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations. ET Licensees may also negotiate agreements for relocation of the Existing Licensees' facilities within the 2 GHz band in which all interested parties agree to the relocation of the Existing Licensee's facilities elsewhere within these bands. "All interested parties" includes the incumbent licensee, the emerging technology provider or representative requesting and paying for the relocation, and any emerging technology licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) Domestic Public Fixed Radio licensees in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology "services, and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations. When it is necessary for an emerging technology provider or representative of unlicensed device manufacturers to negotiate with a fixed microwave licensee with operations in spectrum adjacent to that of the emerging technology provider, the transition schedule of the entity requesting the move will apply.

* * * * *

3. Subpart C is amended by revising Section 21.120(e) to read as follows:

§ 21.120 Authorization of transmitters.

* * * * *

(e) After July 15, 1996, the manufacture (except for export) or importation of equipment employing digital modulation techniques in the 3700-4200, 5925-6425, 6525-6875, 10,550-10,680, and 10,700-11,700 MHz bands must meet the minimum payload capacity requirements of Section 21.122(a)(3).

* * * * *

4. Subpart I is amended by revising Section 21.701(d) and adding Section 21.701(m) to read as follows:

§ 21.701 Frequencies.

* * * * *

(d) *3,700 to 4,200 MHz.* 20 MHz maximum authorized bandwidth.

20 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
3710	3750
3730	3770
3790	3830

3810	3850
3870	3910
3890	3930
3950	3990
3970	4010
4030	4070
4050	4090
4110	4150
4130	4170
n/a	4190[1]

[1] This frequency may be assigned for unpaired use.

* * * * *

(m) In the 3700-4200, 5925-6425, 6525-6875, 10,550-10,680, and 10,700-11,700 MHz bands point-to-point operations on other than the listed frequencies may be authorized where it is shown that the objectives or requirements of the interference criteria prescribed in Section 94.63 could not otherwise be met to resolve the interference problems.

* * * * *

II. Title 47 of the Code of Federal Regulations, Part 22, is amended to read as follows:

1. The authority citation continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, unless otherwise noted. and 307, unless otherwise noted.

2. Subpart B is amended by revising Sections 22.50(a) and 22.50(b) to read as follows: § 22.50 Transition of the 2.11-2.13 and 2.16-2.18 GHz bands from Public Mobile Service to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies (ET Licensees) may negotiate with Public Mobile Service licensees (Existing Licensees) in these bands for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to other fixed microwave bands or to other media, or alternatively, would accept a sharing arrangement with the ET Licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations. ET Licehsees may also negotiate agreements for relocation of the Existing Licensees' facilities within the 2 GHz band in which all interested parties agree to the relocation of the Existing Licensee's facilities elsewhere within these bands. "All interested parties" includes the incumbent licensee, the emerging technology provider or representative requesting and paying for the relocation, and any emerging technology licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) Public Mobile Service licensees in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology service, and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations. When it is necessary for an emerging technology provider or representative of unlicensed device manufacturers to negotiate with a fixed microwave licensee with operations in spectrum adjacent to that of the emerging technology provider, the transition schedule of the entity requesting the move will apply.

* * * * *

III. Title 47 of the Code of Federal Regulations, Part 94, is amended as follows:

PART 94 - PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation in Part 94 continues to read:

AUTHORITY: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Subpart C is amended by revising Sections 94.59(a), 94.59(b), 94.59(f), 94.65(g), and 94.81(c) to read as follows:

§ 94.59 Transition of the 1.85-1.99, 2.13-2.15, and 2.18-2.20 GHz bands from Private Operational-Fixed Microwave Service to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies (ET Licensees) may negotiate with Private Operational-Fixed Microwave Service licensees (Existing Licensees) in these bands for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to other fixed microwave bands or to other media, or alternatively, would accept a sharing arrangement with the ET Licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations. ET Licensees may also negotiate agreements for relocation of the Existing Licensees' facilities within the 2 GHz band in which all interested parties agree to the relocation of the Existing Licensee's facilities elsewhere within these bands. "All interested parties" includes the incumbent licensee, the emerging technology provider or representative requesting and paying for the relocation, and any emerging technology licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) Private Operational-Fixed Microwave Service licensees, with the exception of public safety facilities defined in paragraph (f) of this section, in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology service (two-year voluntary negotiation period), and until one year after an emerging technology service licensee

initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period) or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period). When it is necessary for an emerging technology provider or representative of unlicensed device manufacturers to negotiate with a fixed microwave licensee with operations in spectrum adjacent to that of the emerging technology provider, the transition schedule of the entity requesting the move will apply. Public safety facilities defined in paragraph (f) of this section will maintain primary status in these bands until four years after the Commission commences acceptance of applications for an emerging technology service (four-year voluntary negotiation period), and until one year after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period).

* * * * *

(f) Public safety facilities subject to the four-year voluntary and one-year mandatory negotiation periods, are those that the majority of communications carried are used for police, fire, or emergency medical services operations involving safety of life and property. The facilities within this exception are those Part 94 facilities currently licensed on a primary basis pursuant to the eligibility requirements of Section 90.19, Police Radio Service; Section 90.21, Fire Radio Service; Section 90.27, Emergency Medical Radio Service; and Subpart C of Part 90, Special Emergency Radio Services. Licensees of other Part 94 facilities licensed on a primary basis under the eligibility requirements of Part 90, Subparts B and C, are permitted to request similar treatment upon demonstrating that the majority of the communications carried on those facilities are used for operations involving safety of life and property.

* * * * *

§ 94.65 Frequencies.

* * * * *

(g) *3,700 to 4,200 MHz.* 20 MHz maximum authorized bandwidth.

20 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
3710	3750
3730	3770
3790	3830
3810	3850
3870	3910
3890	3930
3950	3990
3970	4010
4030	4070
4050	4090
4110	4150
4130	4170
n/a	4190[1]

[1] This frequency may be assigned for unpaired use.

* * * * *

§ 94.81 Authorization of microwave equipment.

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(c) After July 15, 1996, the manufacture (except for export) or importation of equipment employing digital modulation techniques in the 3700-4200, 5925-6425, 6525-6875, 10,550-10,680, and 10,700-11,700 MHz bands must meet the minimum payload capacity requirements of Section 21.122(a)(3).

Separate Statement
of
Commissioner James H. Quello

Re: In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9 (RM-7981 & RM-8004)

I agree with the conclusion in this Memorandum Opinion and Order that the incumbents, including public safety entities, in the 1.8 - 2.2 GHz band will likely experience difficulty sharing this frequency band with the new entrants, including PCS providers. I have concerns about the process by which the Commission came to this conclusion and the procedure for relocating these critical public safety communication service providers. In light of our previous decision to grandfather indefinitely a narrowly defined class of public safety entities, I believe that this Commission should have apprised the public safety community of this impending change. The Commission staff could have worked with representatives of the police, fire, and emergency medical communications providers to explore other options such as transition timeframes and, in some cases, technical ability to share the band. I am hopeful that the combination of a voluntary and mandatory five-year total period of negotiation together with the requirement that the new entrants pay for alternative communications systems acceptable to the displaced public safety providers will ameliorate the disruptive effects of their eventual removal from this spectrum band. Nevertheless, these procedures may not be adequate in every situation. For example, in rural communities it may be possible to design new PCS systems around the less densely used existing public safety communications microwave links, while in heavily congested urban environments complete relocation of public safety equipment may be the only technically viable option. Before removal of public safety from the new technology band, the Commission must assure the public safety community that there is spectrum available for their relocation and that the transition will not cost public safety entities additional money or disrupt the provision of their essential services.

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

RE: REDEVELOPMENT OF SPECTRUM TO ENCOURAGE INNOVATION IN THE USE OF NEW TELECOMMUNICATIONS TECHNOLOGIES [ET DOCKET 92-9]

Today, we adopt an Order which clarifies and refines the availability of spectrum for emerging technologies. This action on reconsideration generally provides more flexibility for moving incumbent fixed-microwave users within or from emerging technology bands, and provides more flexibility for relocation band channel pairings. I write separately to express my concern that the five-year relocation plan for public safety entities does not result in any harm to their ability to continue to operate or serve the public in any way. Although I support the various relocation safeguards for public safety entities delineated in this reconsideration Order, it is not my intent to support any actions which will harm or interrupt public safety operations. Thus, if public safety entities, as defined by this reconsideration Order, believe that additional procedural safeguards are required to support their ability to operate without disruption, then I will closely review the need for further reconsideration in this regard. When the Commission undertakes decisions such as this on its own motion, particularly where it reverses a prior Order, then I am prepared for the possibility of additional action upon further reconsideration. I will monitor the response to this reconsideration Order in order to assess the need for such action here.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Billing Name and Address Tariffs
of Local Exchange Carriers
For Subscribers with Unlisted or
Nonpublished Telephone Numbers

ORDER

Adopted: April 21, 1994; Released: April 22, 1994

By the Chief, Tariff Division, Common Carrier Bureau:

1. On June 9, 1993, the Commission released the *BNA Order*,[1] requiring local exchange carriers (LECs) to file tariffs for the provision of billing name and address information (BNA) to telecommunications service providers (TSPs). The Commission specified that LECs were required to, on or before September 8, 1993,[2] file tariffs for the provision of BNA information of customers with listed telephone numbers and in later Orders, specified that tariffs for the provision of BNA associated with unlisted or nonpublished telephone numbers were to be filed on February 23, 1994.[3] The LECs' tariffs for the provision of "listed" BNA have already taken effect.[4] A list of the LECs filing the unlisted BNA tariffs addressed in this Order, with abbreviations for each LEC, is found at Appendix A.

2. American Telephone and Telegraph Company (AT&T) and MCI Telecommunications Corporation (MCI) filed petitions to reject or suspend and investigate the unlisted BNA tariffs listed in Appendix A.[5] The carriers listed in Appendix B submitted oppositions to these petitions. With one exception, these tariffs are scheduled to take effect on April 23, 1994.[6]

3. AT&T claims that many unlisted BNA tariffs violate the BNA rules by prohibiting BNA disclosure for 1+ calls and 10XXX 1+ calls where those end users have requested that their BNA not be disclosed. AT&T also asserts that these tariffs would prohibit disclosure of unlisted BNA for these calls even if those customers have subscribed to an AT&T calling plan.[7] Several LECs respond that tariff provisions restricting disclosure of BNA of customers who have requested that their BNA not be disclosed is consistent with or required by the Commission's Rules or the *BNA Order*.[8] BellSouth notes that the Commission declined to adopt the definition of BNA proposed by MCI in the *Second BNA Reconsideration Order*, which would have had the effect of limiting privacy protections to calling card, third party, and collect calls.[9] JSI and Century request that, if the Commission requires that they file any tariff revisions, that it waive the tariff filing fee because they believe their tariffs already comply with the Commission's rules.[10]

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[1] Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, Second Report and Order, 8 FCC Rcd 4478 (1993) (*BNA Order); on recon.*, Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Reconsideration and Petitions for Stay, CC Docket No. 91-115, 8 FCC Rcd 6393 (*First BNA Reconsideration Order), on further recon.* 8 FCC Rcd 8798 (1993) (*Second BNA Reconsideration Order), recon. pending.*

[2] *BNA Order*, 8 FCC Rcd at 4487 (para. 45).

[3] In the *First BNA Reconsideration Order*, the Commission extended the deadline for filing Ytariffs for the provision of the BNA data of customers with nonpublished or unlisted telephone numbers to February 9, 1994. *First BNA Reconsideration Order*, 8 FCC Rcd at 6393 (para. J3). In the *Second BNA Reconsideration Order*, this deadline was further extended to February 23, 1994. *Second BNA Reconsideration Order*, 8 FCC Rcd at 8810 (para. 69).

[4] *See* Billing Name and Address Tariffs of Local Exchange Carriers, Memorandum Opinion and Order, 8 FCC Rcd 8211 (Com. Car. Bur., Tariff Div., 1993); Nevada Bell, Revisions to Tariff F.C.C. No. 1, Pacific Bell, Revisions to Tariff F.C.C. No. 128, Order, 9 FCC Rcd 351 (Com. Car. Bur., Tariff Div., 1994). For purposes of this Order, we refer to the BNA associated with customers with listed telephone numbers as "listed BNA," and the BNA associated with customers with unlisted or nonpublished telephone numbers as "unlisted BNA."

[5] On March 28 and March 30, 1994, AT&T filed letters with the Commission stating that the points it raised in its general petition are also applicable to TUECA's and Great Plains's tariffs. Letter from Peter H. Jacoby, AT&T, to Secretary, Federal Communications Commission (March 28, 1994) (*March 28 Letter);* Letter from Peter H. Jacoby, AT&T, to Secretary, Federal Communications Commission (March 30, 1994) (*March 30 Letter*). We treat AT&T's letters as amendments to its March 10 petition. In addition, Bell Atlantic Telephone Companies (Bell Atlantic), Anchorage Telephone Utility (Anchorage), Pacific Bell, Nevada Bell, Rochester Telephone Corporation (Rochester) and Vista Telephone Companies (Vista) filed unlisted BNA tariffs. These carriers' tariffs will be the subject of separate Orders.

[6] GTOC and GSTC have voluntarily deferred the effective dates of their tariffs until May 6, 1994.

[7] AT&T Petition at 3-6.

[8] NECA Reply at 3; Lufkin-Conroe Reply at 1-2; Cincinnati Bell Reply at 2; JSI Reply at 5-6; Century Reply at 5-7; NECA Reply at 3, *quoting Second BNA Reconsideration Order*, 8 FCC Rcd at 8805 (para. 42); GVNW and Union Reply at 5-6, *citing BNA Order*, 8 FCC Rcd at 4481 (para. 16) and 4486 n.102. Some LECs contend that the Commission's Rules do not require them to provide BNA for 10XXX calls, and that LECs who do provide 10XXX calls are under no obligation to block the 10XXX calls of subscribers who have requested that their BNA not be disclosed. GTE Reply at 2; GVNW and Union Reply at 9-10. Some LECs argue that they cannot distinguish between calling card, third party, and collect calls and other calls, and so they must restrict BNA disclosure on any call for end users who have requested that their BNA not be disclosed to remain in compliance with the BNA Rules. BellSouth Reply at 2; Cincinnati Bell Reply at 2-3. *See also* Lincoln Reply at 2 (disclosure of BNA for sent-paid calls requires TSPs to segregate sent-paid BNA requests from calling card, third party, and collect BNA requests). Cincinnati Bell asserts that the Ordering and Billing Forum (OBF) is working on developing a billing system that can distinguish sent-paid calls from other calls. Cincinnati Bell Reply at 3.

[9] BellSouth Reply at 3, *citing Second BNA Reconsideration Order*, 8 FCC Rcd at 8804-05 (paras. 34-37).

[10] JSI Reply at 7; Century Reply at 7.

4. AT&T also contends that the restrictions contained in the unlisted BNA tariffs will expose it to a risk of fraud. AT&T claims this risk of fraud exists because there is no way to check for the availability of BNA for 1+ and 10XXX calls.[11] AT&T also criticizes these tariff filings for not stating whether the LECs will block the 1+ and 10XXX calls of customers for which BNA is not available.[12] AT&T also notes that unlisted BNA tariffs filed by US West offer to provide BNA only for calling card, third party and collect calls.[13] The LECs respond that the LIDB "deny" response requirement is limited to calling card, third party, and collect calls, and some suggest that AT&T should raise its request for additional blocking in a petition for reconsideration or further rulemaking.[14] Several carriers deny that withholding the BNA of subscribers who have requested that their BNA not be disclosed subjects AT&T to a risk of fraud.[15]

5. MCI asserts that a number of LECs have not revised their tariffs to permit BNA use for anything other than billing purposes,[16] or do not permit BNA use for all the purposes permitted by Section 64.1201(c) of the Commission's Rules, 47 C.F.R. § 64.1201(c).[17] MCI maintains that this violates the Commission's Rules, and constitutes unjust and unreasonable terms and conditions, in violation of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b).[18] Several LECs reply that the *Second BNA Reconsideration Order* permits, rather than requires, LECs to make BNA available for the permitted purposes other than billing described in that Order.[19] Other LECs maintain that their tariffs as filed already permit all the uses of BNA allowed by the Commission's Rules.[20]

6. MCI argues that a number of LECs reserve the right to request BNA purchasers to explain the purpose for which the BNA will be used, or to provide evidence that the BNA information will be used only for billing for telecommunications services and collecting the amounts due.[21] MCI argues that these requirements are not consistent with the Commission's Rules requiring LECs to provide BNA, and improperly gives LECs authority to enforce the Commission's Rules, in violation of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b).[22]

7. The LECs explain that they reserve the right to request from BNA purchasers the source data upon which the telecommunications service provider (TSP) has based its order.[23] Some of these LECs maintain that MCI's criticism is untimely because their provisions were included in their September BNA filings.[24] JSI and Century note that LECs are permitted to disclose BNA only to TSPs or their authorized billing and collection agents, and argue that they should be allowed to determine whether parties ordering BNA fall into these classifications.[25] These carriers also interpret the *BNA Order* as permitting BNA disclosure only to TSPs who have a "customer relationship" with the end user.[26]

8. In addition, MCI asserts that the section of NYNEX's tariff governing the purposes for which BNA may be used is unreasonably vague.[27] In its reply, NYNEX denies that its tariff language is *prima facie* unlawful so as to warrant rejection.[28] NYNEX also suggests that MCI can rely on the complaint process if it believes that NYNEX is improperly withholding BNA.[29] On April 20, 1994, NYNEX filed an application to modify its tariff language.

9. We have reviewed the BNA tariffs listed in Appendix A, the petitions to reject or suspend and investigate those tariffs, the LECs' replies, and NYNEX's tariff revision. Based on all these filings, we conclude that no compelling

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[11] AT&T Petition at 4-7.

[12] AT&T Petition at 7.

[13] AT&T Petition at 7-8.

[14] Alltel Reply at 3; GTE Reply at 2-3; JSI Reply at 6; Century Reply at 7; Sugar Land Reply at 3. Similarly, Alltel and Sugar Land interpret the BNA rule to require the LIDB "deny" response only to prevent BNA from being used for billing purposes if the customer requests that its BNA not be disclosed to third parties. These carriers maintain that they are permitted to disclose BNA for the purposes described in Sections 64.1201(c)(1)(ii) and (iii) of the Commission's Rules, 47 C.F.R. §§ 64.1201(c)(1)(ii), (iii), even if those customers have asked that their BNA not be disclosed. Alltel Reply at 2-3, Sugar Land Reply at 2-3.

[15] Lufkin-Conroe Reply at 2-3; BellSouth Reply at 2; GVNW and Union Reply at 7-8; NECA Reply at 4.

[16] MCI Petition at 6. MCI cites in particular GSTC, Southwestern Bell, US West, Cincinnati Bell, Rochester, Lufkin-Conroe, and GTOC.

[17] MCI Petition at 7. MCI specifically refers to SNET, Alltel, Illinois Consolidated, Sugar Land, GVNW, and Union.

[18] MCI Petition at 6-7.

[19] Southwestern Bell Reply at 2; GTE Reply at 3-4, *citing BNA Order*, 8 FCC Rcd at 4485; *Second BNA Reconsideration Order*, 8 FCC Rcd at 8805 (para. 38) and n.131. Southwestern Bell maintains that the BNA Rules permit LECs to offer bulk BNA, necessary for the purposes listed in Sections 64.1201(c)(1)(ii) and (iii), through contract. Therefore, according to Southwestern Bell, the usage restrictions in Southwestern Bell's tariff are not applicable to its bulk BNA offering. Southwestern Bell Reply at 2. GVNW and Union maintain that they have provided the BNA of customers presubscribed to a particular interexchange carrier (IXC) to that IXC free of charge and off-tariff in the past, and that they intend to continue to do this. GVNW and Union Reply at 3-5. In a petition for reconsideration of the *Second BNA Reconsideration Order*, US West requested clarification of the rules regarding BNA provision under contract. US West Petition for Reconsideration, CC Docket No. 91-115, filed January 13, 1994, at 19-21.

[20] Lufkin-Conroe Reply at 3; Alltel Reply at 3; Sugar Land Reply at 3; GVNW and Union Reply at 2-3 (language in their tariffs permitting BNA use for "customer service" should be interpreted as permitting all BNA uses described in Section 64.1201(c)(1) of the Commission's Rules). Alternatively, US West states that it is willing to revise its tariff to permit all the uses of BNA described in Section 64.1201(c)(1) of the Commission's rules. US West Reply at 1-2.

[21] MCI Petition at 7-8. MCI lists NYNEX, Alltel, Sugar Land, NECA, JSI, and Century.

[22] MCI Petition at 8-9.

[23] NECA Reply at 4-5; JSI Reply at 2; Century Reply at 2.

[24] NYNEX Reply at 2; NECA Reply at 5-6; JSI Reply at 3; Century Reply at 4.

[25] JSI Reply at 4; Century Reply at 4. *See* Section 64.1201(b) of the Commission's Rules, 47 C.F.R. § 64.1201(b).

[26] JSI Reply at 4-5; Century Reply at 4-5; *quoting BNA Order*, 8 FCC Rcd at 4484 (para. 31) (footnotes omitted) ("We limit BNA disclosure to those interstate service providers to which the end user has offered a calling card account or a line account as payment for services.")

[27] MCI Petition at 4-6.

[28] NYNEX Reply at 3.

[29] NYNEX Reply at 3.

argument has been presented that these tariffs are patently unlawful so as to warrant rejection, or that an investigation is warranted at this time.[30]

10. Accordingly, IT IS ORDERED that the petitions for rejection or suspension and investigation filed by American Telephone and Telegraph Company and MCI Telecommunications Corporation on March 10, 1994, against one or more of the transmittals listed in Appendix A of this Order, ARE DENIED, to the extent indicated above.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

APPENDIX A

I. Tariffs Petitioned By Both AT&T and MCI

1. Alltel Telephone System (Alltel): Revisions to Tariff F.C.C. No. 1, Transmittal No. 24.

2. Century Telephone of Ohio, Inc. (Century): Revisions to Tariff F.C.C. No. 1, Transmittal No. 17.

3. Cincinnati Bell Telephone Company (Cincinnati Bell): Revisions to Tariff F.C.C. No. 35, Transmittal No. 651.

4. GTE System Operating Companies (GSTC): Revisions to Tariff F.C.C. No. 1, Transmittal No. 81.

5. GTE Telephone Operating Companies (GTOC): Revisions to Tariff F.C.C. No. 1, Transmittal No. 863.

6. GVNW Inc./Management (GVNW): Revisions to Tariff F.C.C. No. 2, Transmittal No. 101.

7. Illinois Consolidated Telephone Company (Illinois Consolidated): Revisions to Tariff F.C.C. No. 2, Transmittal No. 81.

8. John Staurulakis, Inc. (JSI): Revisions to Tariff F.C.C. No. 1, Transmittal No. 9.[31]

9. Lufkin-Conroe Telephone Exchange, Inc. (Lufkin-Conroe): Revisions to Tariff F.C.C. No. 2, Transmittal No. 19.

10. National Exchange Carrier Association, Inc. (NECA): Revisions to Tariff F.C.C. No. 5, Transmittal No. 590.

11. Southern New England Telephone Company (SNET): Revisions to Tariff F.C.C. No. 39, Transmittal No. 600.

12. Sugar Land Telephone Company (Sugar Land): Revisions to Tariff F.C.C. No. 2, Transmittal No. 27.

13. Union Telephone Company (Union): Revisions to Tariff F.C.C. No. 2, Transmittal No. 50.

II. Tariffs Petitioned Only By AT&T

1. BellSouth Telecommunications, Inc. (BellSouth): Revisions to Tariff F.C.C. No. 1, Transmittal No. 190.

2. Great Plains Communications, Inc. (Great Plains): Revisions to Tariff F.C.C. No. 3, Transmittal No. 61.

3. Lincoln Telephone and Telegraph Company (Lincoln): Revisions to Tariff F.C.C. No. 3, Transmittal No. 84.

4. Telephone Utilities Exchange Carrier Association (TUECA): Revisions to Tariff F.C.C. No. 1, Transmittal No. 130.

III. Tariffs Petitioned Only By MCI

1. New York Telephone Company and New England Telephone and Telegraph Company (NYNEX): Revisions to Tariff F.C.C. No. 1, Transmittal No. 279.

2. Southwestern Bell Telephone Company (Southwestern Bell): Revisions to Tariff F.C.C. No. 73, Transmittal No. 2334.

3. US West Communications, Inc. (US West): Revisions to Tariff F.C.C. No. 1, Transmittal No. 453.

APPENDIX B

Parties Filing Replies

1. Alltel
2. BellSouth
3. Century
4. Cincinnati Bell
5. GTOC and GSTC (together, GTE) (Joint Reply)
6. GVNW and Union (Joint Reply)
7. JSI
8. Lincoln
9. Lufkin-Conroe
10. NECA
11. NYNEX
12. Southwestern Bell
13. Sugar Land
14. US West

[30] We note that several of the issues raised with respect to these tariffs are also raised in a petition for reconsideration of the *Second BNA Reconsideration Order*. Nothing in this Order should be interpreted to decide or otherwise prejudge these issues.

[31] MCI listed Warwick Valley Telephone Company as one of the tariffs it filed its petition against. However, Warwick Valley is an issuing carrier of the JSI tariff.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Licenses of

Southland Holdings, Inc. MSDCD 94-1

For authority to operate on an assigned 900 MHz frequency in the Public Land Mobile Service under call signs at various locations

ORDER

Adopted: April 13, 1994; Released: April 19, 1994

By the Acting Chief, Common Carrier Bureau:

1. Upon the evaluation of information before the Common Carrier Bureau's Mobile Services Division (MSD), the MSD initiated an investigation into whether Southland Holdings, Inc., a licensee in the Public Land Mobile Service, was operating and providing service in accordance with the Commission's Rules.[1]

2. The Common Carrier Bureau and Southland Holdings, Inc., Debtor-in-Possession, (Southland) have reached an agreement that resolves the matters raised by the investigation. The terms and conditions of this agreement are contained in the attached Consent Decree. We find that the public interest will be served by approving the Consent Decree, the terms of which are incorporated herein by reference. Based on the facts before us, we find no substantial and material questions of fact regarding Southland's basic qualifications to be a licensee even if the conduct alleged on the basis of the investigation were true.

3. Accordingly, IT IS ORDERED that the Consent Decree IS ADOPTED and becomes effective pursuant to the terms in paragraph 25 of the Consent Decree.

4. IT IS FURTHER ORDERED that this Order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

A. Richard Metzger, Jr.
Acting Chief, Common Carrier Bureau

CONSENT DECREE

I. INTRODUCTION

1. This is a Consent Decree entered into this 13 day of April, 1994, between the Common Carrier Bureau ("Bureau") of the Federal Communications Commission ("Commission"), and Southland Holdings, Inc., Debtor-in-Possession, ("Southland"). By this Consent Decree, the Bureau agrees to terminate the informal investigation of Southland Holdings, Inc. by its Mobile Services Division ("Division"), and Southland agrees to take the steps detailed herein.

2. Southland holds numerous licenses, construction permits, and applications for one-way paging authorizations nationwide. In California, Southland holds a one-way paging license under call sign KNKG523 to provide service from numerous transmitter locations throughout California (collectively referred to as the "California Authorizations"). In addition, Southland holds twenty-four licenses (serving twenty-nine transmitter locations) for one-way paging in various cities in various other states (collectively referred to as the "Non-California Authorizations"). The California Authorizations and Non-California Authorizations are collectively referred to as the "FCC Authorizations." A list of the California Authorizations is set forth as Attachment A; a list of the Non-California Authorizations is set forth as Attachment B.

II. BACKGROUND

3. In March 1992, the Division received information that frequency 931.1125 MHz authorized to Southland Holdings, Inc. under call signs KNKK336 and KNKK284 might not be in use at various authorized locations in New Jersey, New York, and Connecticut. By letter dated March 20, 1992, the Division requested that, if Southland Holdings, Inc. was not providing service on 931.1125 MHz at those locations, Southland was to furnish the date that such service was terminated and to forward the licenses to the Commission for cancellation in accordance with Section 22.303 of the Commission's Rules. Alternatively, if there was operation on these stations, Southland was requested to provide evidence showing that it had been operating and providing service.

4. By letter dated May 11, 1992, the Division further notified Southland Holdings, Inc. that upon further review of information at the Commission, it appeared that frequency 931.1125 MHz authorized to Southland Holdings, Inc. under call sign KNKK284 was not in use at authorized locations in the Washington, D.C., Baltimore, Maryland, and Philadelphia, Pennsylvania, metropolitan areas. The Division requested that Southland Holdings, Inc. provide additional information regarding whether it had (a) actually constructed facilities at each of the locations; and (b) modified its licenses to delete locations that Southland Holdings, Inc. had not operated for more than 90 continuous days or did not intend to resume operating. For operating facilities, it was asked to provide evidence showing that it had been operating and providing service.

[1] *See* Letter from Chief, MSD, to Southland Holdings, Inc. (Mar. 20, 1992).

5. On July 13, 1992, the Division notified Southland Holdings, Inc. that, based on a review of Southland's responses to the Commission's earlier requests for information, the Division believed that Southland Holdings, Inc. "has lacked candor and has misrepresented in its FCC Form 489 filings that it was commencing service upon filing of the form." The Division stated that out of a total of twenty-one locations authorized to Station KNKK284 in the New York, Washington, D.C., Baltimore, and Philadelphia metropolitan areas, Southland Holdings, Inc. had constructed only five and did not have any paying customers. The Division stated that Southland Holdings, Inc. appeared not to have been providing service to the public as required by its authorizations. While indicating the possible existence of a sufficient basis for initiating a proceeding to revoke the license for Station KNKK284, the Division noted that the Commission had adopted a limited amnesty period during which licensees who relinquish unused channels would not be subject, until new rules for Part 22 became effective, to forfeitures for either discontinuing service or for failing to commence service in accordance with the Commission's Rules. *See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, 7 FCC Rcd 3658, 3660 (1992). The Division requested that Southland Holdings, Inc. respond "to the matters regarding its failure to provide service to the public and its warehousing of channel 931.1125 MHz contrary to the public interest."

6. By letter dated August 28, 1992, the Division requested further information concerning the telecommunications interests of Southland Holdings, Inc. Specifically, it requested that Southland Holdings, Inc. provide the following information:

(a) a list of all radio licenses, construction permits, and pending applications in which Southland Holdings, Inc. holds any direct or indirect interest, as well as an explanation of the exact nature and extent of these interests;

(b) a list of the current owners (including type and percentage) of each license, permit and pending application listed in (a), including any changes in ownership that have occurred since the licenses and permits were issued and the pending applications were filed;

(c) current traffic usage showings, as required by Section 22.516 of the Commission's Rules, for each of the licensed stations;

(d) the number of subscribers for each station listed in (c), or, if there are not subscribers for a particular station, the date that the last subscriber unit was served and a detailed explanation of what efforts were taken to acquire subscribers for each of the licensed stations;

(e) the dates that the first subscriber was served on each licensed station; and

(f) a list of all stations that have not provided service for a period of 90 or more days.

7. Southland Holdings, Inc. has submitted a timely response to each of the Division's requests for information regarding this matter.

8. Southland Holdings, Inc. filed a voluntary petition for bankruptcy pursuant to Chapter 11 of Title 11 of the U.S. Bankruptcy Code in the United States Bankruptcy court for the Central District of California, Santa Ana Division, on March 10, 1993.

9. Southland filed an application for involuntary assignment of license from Southland Holdings, Inc., to Southland Holdings, Inc., Debtor-in-Possession, with the Commission on April 9, 1993.

10. By letter dated April 19, 1993, the Division requested further information in connection with its review of Southland's involuntary assignment application. Specifically, it requested that Southland provide the following information:

(a) a statement of public interest setting forth the reasons for the assignment;

(b) for non-California call signs, copies of all FCC Form 489s filed by Southland Holdings, Inc. notifying the Commission that an authorized location is constructed and providing service;

(c) for non-California call sign Station KNKL551, Hopkinton, Massachusetts, documentation showing that Southland Holdings, Inc. actually constructed the facility and is providing service to active, paying subscribers;

(d) for California Station KNKG523, a complete copy of FCC Form 463, File No. 27750-CD-ML-01-92, which reflects all current authorizations for facilities under that call sign;

(e) for California Station KNKG523, verification that all information for each frequency at each location listed on the FCC Form 463 for the station is correct;

(f) a complete listing of the information required by Item 6, FCC Form 490.

11. Southland submitted a timely response to the Division's April 19, 1993 request for information by filing an amendment to its application for involuntary assignment with the Commission on April 26, 1993.

12. By informal requests made on or about May 26, 1993, the Division requested that Southland provide copies of FCC Form 405 with regard to nineteen call signs.

13. Southland submitted a timely response to the Division's May 26, 1993 request for information by filing an amendment to its application for involuntary assignment with the Commission on June 1, 1993.

14. By letter dated June 9, 1993, the Division requested further information regarding Southland's involuntary license application. Specifically, it requested that Southland provide the following information:

(a) a court order or other documentation showing that the U.S. Bankruptcy Court formally approved Southland as controlling the company;

(b) copies of FCC Form 463 with regard to eleven call signs;

(c) a copy of FCC Form 405 for Station KNKG523.

15. Southland submitted a timely response to the Division's June 9, 1993 request for information by filing an amendment to its application for involuntary assignment with the Commission on June 21, 1993.

16. The authorizations listed on Attachment C were issued by the FCC to Southland Holdings, Inc. to construct and operate one- way paging facilities for non-California locations and expired subsequent to the filing of the voluntary bankruptcy petition on March 10, 1993. Southland filed applications in July 1993 on FCC Form 489 either to reinstate or extend the time to construct the facilities specified on such FCC authorizations (the "Expired Authorizations").

III. AGREEMENT

17. For the purposes of this Consent Decree, the following definitions apply:

(a) "Parties" means (i) Southland, and (ii) Ziad Bayaa, sole owner and 100% shareholder of Southland.

(b) "Order" means an Order of the Bureau, on delegated authority, adopting the terms and conditions of this Consent Decree.

(c) A "Final Order" means an Order of the Bureau that (i) has not been vacated, reversed, stayed, set aside, annulled, or suspended; (ii) with respect to which no timely appeal, request for stay, or petition for rehearing, reconsideration or review, reconsideration by the Bureau on its own motion, or review by the Commission on its own motion is pending; and (iii) as to which the time for filing any such appeal, request, or petition, or for consideration by the Bureau on its own motion or Commission on its own motion, has expired.

18. The Parties admit the jurisdiction of the Commission over them and over the subject matter of this action for the purposes of this Consent Decree and any Order described in paragraph 17(b).

19. The provisions of this Consent Decree shall be incorporated by reference in any Order described in paragraph 17(b) that formally adopts this Consent Decree and terminates this informal inquiry and investigation.

20. The Parties waive any rights they may have to appeal any Order described in paragraph 17(b).

21. In consideration of the Bureau's entering into this Consent Decree, and terminating the Division's informal investigation, the Parties agree to the following terms:

(a) Upon the date that the Consent Decree becomes effective, Southland shall surrender for cancellation the authorizations or dismiss with prejudice the pending applications, as the case may be, for the locations specified in Attachment G.

(b) Within forty-five days following the date that the Consent Decree becomes effective, Southland shall:

(i) surrender for cancellation the authorizations for all non-operational locations associated with Southland's Non-California operations listed in Attachment B and not previously surrendered pursuant to paragraph 21(a).

(ii) surrender for cancellation the authorizations for all non-operational locations associated with Southland's California operations listed in Attachment D and not previously surrendered pursuant to paragraph 21(a).

(iii) dismiss with prejudice the applications for construction authorizations that are pending on the date hereof that are listed in Attachment E and not previously dismissed pursuant to paragraph 21(a).

(iv) dismiss with prejudice the applications on FCC Form 489 to reinstate or extend the Expired Authorizations listed on Attachment C.

(c) Southland shall be entitled to retain all of the remaining FCC Authorizations, including the authorizations for its operational locations in California.

(d) The Commission agrees to accept for filing and place on a public notice to be released prior to or no later than seven days after the date that the Consent Decree becomes effective Southland's applications for FCC authorizations to build and operate one-way paging facilities for the locations specified in Attachment F. The Commission agrees to expeditiously process such applications and to act upon such applications as soon as possible subsequent to the thirty-first (31st) day after release of such public notice. In the absence of additional facts, the Commission agrees that it will not consider any of the information obtained during the investigation against Southland Holdings, Inc. in evaluating Southland's basic qualifications for such FCC authorizations and will not object to the grant of any of these applications based on any of the information obtained during the investigation against Southland Holdings, Inc.

(e) Southland shall be entitled to retain and continue to prosecute all pending applications for construction authorizations that are listed on Attachment H. The Commission agrees to accept for filing and place on a public notice to be released prior to or no later than seven days after the date that the Consent Decree becomes effective Southland's applications to build and operate one-way paging facilities for the locations specified in Attachment H.

(f) The Commission agrees to grant by separate action no later than the date that the Order becomes effective Southland's application on FCC Form 490 for involuntary assignment of the FCC Authorizations from Southland Holdings, Inc. to Southland.

(g) Southland shall not be required to make any monetary contribution to the United States Treasury, including but not limited to the payment of any fine or monetary sanction, in connection with the adoption of this Consent Decree.

(h)During the period commencing on the date the Consent Decree becomes effective and ending on a date five years from the date the Consent Decree becomes effective, none of the persons who were officers, directors, or shareholders of Southland Holdings, Inc. on March 9, 1993 shall, either directly or indirectly, reapply for any of the: (i) licenses or authorizations surrendered pursuant to paragraphs 21(a), 21(b)(i) or 21(b)(ii) or facilities specified in the applications for construction authorizations that are being dismissed pursuant to paragraphs 21(a),

21(b)(iii) or 21(b)(iv), or be a party to any other application filed with the Commission. The Commission agrees that the preceding restriction on reapplying for the surrendered licenses and authorizations and facilities specified in the dismissed applications shall not apply to Southland or any assignee of Southland for any of the California Authorizations for operational locations. The Commission further agrees that Southland or any assignee of Southland for any of the California Authorizations for operational locations shall be permitted to apply for: (i) construction authorizations for facilities specified in any California Authorization for a non-operational location or any Non-California Authorization surrendered pursuant to paragraphs 21(a), 21(b)(i) or 21(b)(ii); or (ii) facilities specified in applications dismissed pursuant to paragraphs 21(a), 21(b)(iii) or 21(b)(iv). In the absence of additional facts, the Commission agrees that it will not consider any of the information obtained during the investigation against Southland Holdings, Inc. in evaluating Southland's basic qualifications for such FCC authorizations and will not object to the grant of any of these applications based on any of the information obtained during the investigation against Southland Holdings, Inc.

(i) All construction authorizations issued to Southland Holdings, Inc. that Southland Holdings, Inc. or Southland permitted to expire without constructing facilities are terminated upon release by the FCC of a public notice confirming the termination of such construction permits, provided that such public notice shall not be released prior to the date that the Order becomes effective.

22. In light of the covenants and representations contained in this Consent Decree, and in express reliance thereon, the Bureau will terminate the Division's informal investigation of Southland Holdings, Inc. will take no further action against the Parties for the conduct specified in paragraphs 3 through 16 of this Consent Decree, and will issue the Order described in paragraph 17(b) of this Consent Decree. Such termination is without a finding by the Bureau of wrongdoing by the Parties. In the future, in the absence of additional facts, the Bureau will not institute, on its own motion, any proceeding based on the information obtained during the investigation against Southland Holdings, Inc. or use or consider such information in evaluating the basic qualifications of Southland to hold any FCC authorizations, construction permits or licenses including its consideration of the qualifications of Southland in connection with its review and consideration of the applications listed in Attachments F and H. The Bureau will not conduct further proceedings of any kind based on the matters raised or investigated herein unless information beyond that made available in this informal investigation which warrants inquiry is presented.

23. As set forth in the attached Declaration of Robert F. Bicher III, President and Chief Executive Officer of Southland, Southland has filed a motion with the U.S. Bankruptcy Court for approval of the sale of Southland's assets. The proceeds from the sale of Southland's assets will be insufficient to pay unsecured creditors in full. Therefore, there will be no distribution to equity holders of Southland. No officer or director of Southland (except Mr. Bicher) will receive any distribution as a result of the sale. See Attachment I.

24. The Parties understand and accept that the Order terminating this proceeding and allowing Southland to retain its interest in the remaining FCC Authorizations shall be in accordance with and conditioned on compliance with paragraph 21 of this Decree. If Southland fails to comply with paragraph 21, the Consent Decree shall become null and void, and the Bureau may pursue whatever remedies are available.

25. Consistent with the terms of paragraph 18, this Consent Decree will be effective five (5) days after the entry of an order by the United States Bankruptcy Court for the Central District of California, Santa Ana Division, ("Court Order"), wherein the Chapter 11 case of Southland Holdings, Inc. is pending, docketed as case number SA 93-12463 JB, after appropriate notice to creditors and other parties in interest, approving the compromise and settlement of the controversy with the Commission as embodied in this Consent Decree. In the event that such Court Order is subject to appeal, modification or certiorari proceedings, the Court Order shall be effective if the Court Order has not been stayed by a court of competent jurisdiction. Further, in the event the Bankruptcy Court for the Central District of California, Santa Ana Division, either does not enter an order of approval or in any way modifies the terms of this consent decree, or the Order adopting this Consent Decree does not become a Final Order pursuant to paragraph 17(c) of this decree, the Commission reserves the right to pursue whatever remedies are available.

26. The Parties agree that any violation of the Order incorporating the terms of this Consent Decree shall constitute a separate violation of a Commission Order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission Order.

27. If the Consent Decree is not signed by the Bureau and Southland, or is otherwise rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any fashion in a legal proceeding.

28. If the Commission brings an action in United States District Court to enforce the terms of the Order, the Parties agree that they will not contest the validity of the Order, will waive any statutory right to a trial de novo, and will consent to a judgment incorporating the terms of this Consent Decree.

29. This Consent Decree is for purposes of settlement only, and its execution does not constitute an admission by any of the Parties of any violation of law, rules, or policy.

For the Common Carrier Bureau
A. Richard Metzger, Jr.
Acting Chief, Common Carrier Bureau
Federal Communications Commission

For Southland Holdings, Inc.,
Debtor-in-Possession
Robert F. Bicher, III
President and Chief Executive Officer

ATTACHMENT A

ATTACHMENT A

CALIFORNIA AUTHORIZATIONS

City	Location		Frequency	File Number	Call Sign
Los Angeles	Mt. Wilson		931.1125	24720-CD-R-01-89	KNKG523
		Control	72.18	20891-CD-P/ML-01-92*	KNKG523
			931.5875	24720-CD-R-01-89	KNKG523
		Control	72.40	24720-CD-R-01-89	KNKG523
Corona	Sierra Peak		931.1125	24720-CD-R-01-89	KNKG523
			931.5875	30684-CD-P/ML-01-89	KNKG523
Glendora	Sunset Peak		931.1125	24720-CD-R-01-89	KNKG523
			931.5875	24720-CD-R-01-89*	KNKG523
Los Angeles	1st Int Bk Bldg		931.1125	24720-CD-R-01-89	KNKG523
			931.5875	FILL-IN 8/15/89	KNKG523
Palos Verdes	San Pedro Hill		931.1125	24720-CD-R-01-89	KNKG523
			931.5875	24720-CD-R-01-89	KNKG523
Goleta	St. Ynez		931.1125	24720-CD-R-01-89*	KNKG523
			931.5875	30687-CD-P/ML-1-89	KNKG523
Santa Paula	South Mtn.		931.1125	24720-CD-R-01-89	KNKG523
			931.5875	24720-CD-R-01-89*	KNKG523
San Diego	San Miguel		931.1125	24720-CD-R-01-89*	KNKG523
			931.5875	30675-CD-P/ML-01-89*	KNKG523
Malibu	Saddle Peak		931.1125	24720-CD-R-01-89*	KNKG523
			931.5875	30681-CD-P/ML-01-89	KNKG523
San Diego	Mt. Woodson		931.1125	24720-CD-R-01-89*	KNKG523
			931.5875	3166-CD-P/ML-01-89*	KNKG523
		Control	75.82	20893-CD-P/ML-01-92*	KNKG523
San Diego	530 B St SD		931.1125	24720-CD-R-01-89*	KNKG523
			931.5875	24720-CD-R-01-89*	KNKG523
			72.40	24720-CD-R-01-89*	KNKG523
			72.18	24720-CD-R-01-89*	KNKG523

City	Location		Frequency	File Number	Call Sign
Corona	Santiago Peak		931.1125	24720-CD-R-01-89*	KNKG523
			931.5875	24720-CD-R-01-89*	KNKG523
La Crescenta	Mt. Lukens		931.1125	24720-CD-R-01-89	KNKG523
			931.5875	30680-CD-P/ML-01-89	KNKG523
Running Springs	Heaps Peak		931.1125	24720-CD-R-01-89*	KNKG523
			931.5875	30676-CD-P/ML-01-89	KNKG523
Victorville	Quartzite Mtn.		931.1125	29724-CD-P/ML-01-89*	KNKG523
San Clemente	1.8 mi NE of		931.1125	29720-CD-P/ML-01-89*	KNKG523
			931.5875	30684-CD-P/ML-01-89	KNKG523
San Fernando	Oat Mtn.		931.1125	24720-CD-R-01-89*	KNKG523
			931.5875	24720-CD-R-01-89*	KNKG523
Palm Springs	Edom Hill		931.1125	25625-CD-P/L-01-86*	KNKG523
Santa Anna	1224 Village Way		72.18	25709-CD-P/L-(01)-87*	KNKG523
		Control	75.56	25709-CD-P/L-(01)-87*	KNKG523
Costa Mesa	666 Anton Way		931.1125	FILL-IN 8/15/89	KNKG523
			931.5875	FILL-IN 8/15/89	KNKG523
		Control	75.58	24720-CD-R-01-89	KNKG523
Vista	2 mi east		931.1125	24720-CD-R-01-89*	KNKG523
			931.5875	31166-CD-P/ML-01-89*	KNKG523
		Control	72.18	27750-CD-ML-01-92	
Bakersfield	2315 Q St		931.1125	22297-CD-P/L-01-87	KNKG523
Mission Valley	591 Camino de la Rein		931.1125	FILL-IN 8/13/87	KNKG523
Long Beach	Signal Peak		931.1125	FILL-IN 8/13/87	KNKG523
Palmdale	Mt. Hauser		931.1125	29722-CD-P/ML-01-89*	KNKG523
La Habra	La Habra		931.1125	FILL-IN 8/13/87	KNKG523
Chula Vista	Otay Mtn		72.48	20671-CD-P/L-(01)-88	KNKG523
		Control	75.82	21931-CD-P/ML-01-89*	KNKG523

1966

City	Location	Frequency	File Number	Call Sign
Thousand Oaks	Raznow Peak	931.1125	FILL-IN 6/1/88	KNKG523
Woodland Hills	5601 DeSoto Ave	931.1125	FILL-IN 6/1/88	KNKG523
Bellflower	9500 E Rosecrans Ave	931.1125	FILL-IN 11/1/88	KNKG523
Danville	Mount Diablo	931.1125	24720-CD-R-01-89*	KNKG523
		72.72	24720-CD-R-01-89	KNKG523
		931.5875	31146-CD-P/ML-01-89	KNKG523
Los Gatos	Loma Prieta	931.1125	24720-CD-R-01-89*	KNKG523
		931.5875	31133-CD-P/ML-01-89	KNKG523
San Jose	South Bay Office Twr	931.1125	24720-CD-R-01-89	KNKG523
		931.5875	31158-CD-P/ML-01-89	KNKG523
Redwood City	Skeggs Point	931.1125	24720-CD-R-01-89*	KNKG523
Oakland	Round Top Peak	931.1125	FILL-IN 5/23/88	KNKG523
Daly City	San Bruno Mtn	931.1125	24720-CD-R-01-89*	KNKG523
		931.5875	26021-CD-P/L-01-88*	KNKG523
Concord	TV Hill	931.1125	24720-CD-R-01-89*	KNKG523
		931.5875	31188-CD-P/ML-01-89	KNKG523
Vacaville	Mt. Vaca	931.1125	24720-CD-R-01-89*	KNKG523
		931.5875	31141-CD-P/ML-01-89*	KNKG523
Stockton	242 Sutter St	931.1125	FILL-IN 8/12/88	KNKG523
		931.5875	31147-CD-P/ML-01-89	KNKG523
Salinas	Fremont Peak	931.1125	21136-CD-P/L-01-87	KNKG523
Fresno	1080 Fulton Mall	931.1125	21035-CD-P/L/-01-87*	KNKG523
Visalia	Walnut & Woodland	931.1125	21035-CD-P/L-01-87*	KNKG523
Madera	Hospital	931.1125	21035-CD-P/L-01-87*	KNKG523
Merced	1723 N Street	931.1125	21035-CD-P/L-01-87*	KNKG523
Mill Valley	Mount Tamalpais	931.1125	FILL-IN 5/23/88	KNKG523
		931.5875	31185-CD-P/ML-01-89	KNKG523

City	Location		Frequency	File Number	Call Sign
San Francisco	Burk Street		75.54	24993-CD-P/L-01-88*	KNKG523
Foster City	1170 Chess Drive		75.54	22805-CD-P/ML-01-90*	KNKG523
Calistoga	Mt. St. Helena		931.1125	25904-CD-P/L-01-88*	KNKG523
			931.5875	31320-CD-P/ML-01-89	KNKG523
Sacramento	Park Place		931.1125	FILL-IN 8/12/88	KNKG523
Pleasanton	Sunol Ridge		931.1125	FILL-IN 5/23/88	KNKG523
San Francisco	Clay and Jones Sts		931.1125	FILL-IN 5/23/88	KNKG523
Santa Maria	Tepusquet Peak		931.1125	32109-CD-P/ML-01-89*	KNKG523
Ventura	Red Mountain		931.1125	32085-CD-P/ML-01-89*	KNKG523
San Diego	3950 Park Blvd.		931.1125	23451-CD-ML-(01)-90	KNKG523
Encinitas	Water Tank		931.1125	FILL-IN	KNKG523
Panorama City	Kaiser 13652 Cantrara		931.1125	FILL-IN	KNKG523
Covina	210 S. Bernardino		931.1125	FILL-IN	KNKG523
La Jolla	Villa Capri Dr		931.1125	FILL-IN	KNKG523
Los Angeles	600 So. Commonwealth Ave.		931.1125	27750-CD-ML-01-92	KNKG523
		Control	72.18		
Glendale	Verduga Peak		931.1125	27750-CD-ML-01-92	KNKG523
Rancho Palos Verdes	28503 Highride Rd.		931.1125	27750-CD-ML-01-92	KNKG523
			931.5875		
			931.1125		
Riverside	1mi. NE of US 215 & Rte 60		931.1125	27750-CD-ML-01-92	KNKG523
Indio	Indio Hills		931.1125	27750-CD-ML-01-92	KNKG523
		Control	75.64	27750-CD-ML-01-92	KNKG523
Corona	Santiago Peak	Control	72.52	27750-CD-ML-01-92	KNKG523
		Control	75.56	27750-CD-ML-01-92	KNKG523
		Control	72.18	27750-CD-ML-01-92	KNKG523
San Luis Obispo	Tassajera Peak		931.1125	27750-CD-ML-01-92	KNKG523

1968

City	Location		Frequency	File Number	Call Sign
Bakersfield	1430 Truxton		931.1125	27750-CD-ML-01-92	KNKG523
Banning	Snow Peak		931.1125	27750-CD-ML-01-92	KNKG523
		Control	75.98	27750-CD-ML-01-92	KNKG523
Frazier Park	Frazier Mountain		931.1125	27750-CD-ML-01-92	KNKG523
Glamis	Black Mountain		931.1125	27750-CD-ML-01-92	KNKG523
Rancho Cordova	1100 Fulsom Blvd.		931.1125	27750-CD-ML-01-92	KNKG523
Sacramento	555 Capitol Street		931.1125	27750-CD-ML-01-92	KNKG523
Woodland	1020 East Street		931.1125	27750-CD-ML-01-92	KNKG523
Lodi	820 South Cluff		931.1125	27750-CD-ML-01-92	KNKG523
Stockton	1325 North Center Street		931.1125	27750-CD-ML-01-92	KNKG523
Modesto	12th & J Streets		931.1125	27750-CD-ML-01-92	KNKG523
Tracy	Mount Oso		931.1125	27750-CD-ML-01-92	KNKG523
Novato	Big Rock Ridge		931.1125	27750-CD-ML-01-92	KNKG523
Hayward	27640 Fairview Ave.		931.1125	27750-CD-ML-01-92	KNKG523
Oakland	Mose Wood Building		931.1125	27750-CD-ML-01-92	KNKG523
San Jose	Sherman Building		931.1125	27750-CD-ML-01-92	KNKG523
Sacramento	North Gate Tower		931.1125	27750-CD-ML-01-92	KNKG523
		Control	75.88	27750-CD-ML-01-92	KNKG523
Avalon	7.5 miles NW of Avalon		931.5875	27750-CD-ML-01-92	KNKG523
			931.1125	27750-CD-ML-01-92	KNKG523
			931.1125	27750-CD-ML-01-92	KNKG523
Tehachapi	Double Mountain	Control	72.76	27750-CD-ML-01-92	KNKG523
Palmdale	Mount Emma		931.1125	27750-CD-ML-01-92	KNKG523
Escondido	Mt. Palomar		931.1125	27750-CD-ML-01-92	KNKG523
Barstow	3 miles south of Barstow		931.1125	27750-CD-ML-01-92	KNKG523
Squaw Valley	Bear Mountain		931.1125	27750-CD-ML-01-92	KNKG523
Pineridge	Bald Mountain		931.1125	27750-CD-ML-01-92	KNKG523

1969

City	Location		Frequency	File Number	Call Sign
		Control	75.94	27750-CD-ML-01-92	KNKG523
Frazier Peak	Frazier Peak	Control	72.96	27750-CD-ML-01-92	KNKG523

* The locations associated with these file numbers are also under File No. 277-CD-ML-01-92 authorized by the Commission.

1970

ATTACHMENT B

NON-CALIFORNIA AUTHORIZATIONS
TO BE SURRENDERED

City	Location	Frequency	File Number	Call Sign
Oklahoma City, OK	2200 Classen Blvd	931.1125	25330-CD-R-01-89	KNKJ705
Milwaukee, WI	First Wisc Bank Bldg	931.1125	25331-CD-R-01-89	KNKJ708
Chicago, IL	Sears Building, S. Wac	931.1125	25334-CD-R-01-89	KNKJ712
Kansas City, MO	1301 Wyandotte St.	931.1125	25336-CD-R-01-89	KNKJ709
Jacksonville, FL	Independence Square	931.1125	25338-CD-R-01-89	KNKJ717
Miami, FL	One Biscayne Blvd.	931.1125	24723-CD-R-01-89	KNKJ724
Orlando, FL	CNA Building	931.1125	24722-CD-R-01-89	KNKJ725
Denver, CO	Centennial Cone	931.1125	24721-CD-R-01-89	KNKJ729
Minneapolis, MN	IDS Center	931.1125	Renewal FD/2/22/89	KNKJ732
New Orleans, LA	1001 Howard Ave.	931.1125	24718-CD-R-01-89	KNKJ733
Saint Louis, MO	1 Mercantile Center	931.1125	25327-CD-R-01-89	KNKJ736
Indianapolis, IN	AUL Building	931.1125	24719-CD-R-01-89	KNKJ737
Phoenix, AZ	Valley Nat Bank Bldg	931.1125	27232-CD-R-01-89	KNKJ740
Cincinnati, OH	8th and Matson	931.1125	27231-CD-R-01-89	KNKJ701
Portland, OR	Mt. Scott, 7mi. SE of	931.1125	27230-CD-R-01-89	KNKJ720
Sarasota, FL	Rte 780, 7mi E	931.1125	24719-CD-R-01-89	KNKJ728
Salt Lake City, UT	36 South State St.	931.1125	25341-CD-R-01-89	KNKJ630
San Antonio, TX	5302 NE Loop 1604	931.1125	25324-CD-R-01-89	KNKJ721
Albuquerque, NM	Western Bank Bldg	931.1125	25325-CD-R-01-89	KNKJ738
Selden, NY	Adirondack Dr.	931.1125	21392-CD-ML-01-89	KNKK336
Trumbull, NJ	Video Lane	931.1125	21392-CD-ML-01-89	KNKK336
Laurel, MD	2.5 mi. NW of	931.1125	32083-CD-P/ML-01-89	KNKK284
Trenton, NJ	2930 S Broad St	931.1125	24195-CD-P/ML-01-90	KNKK336
Cleveland, OH	3570 Warrensville Shak	931.1125	23342-CD-P/ML-01-90	KNKM493
Las Vegas, NV	1500 E Tropicana	931.1125	23342-CD-P/ML-01-90	KNKM493
Fort Lee, NJ	2010 Jones Road	931.1125	24191-CD-P/ML-01-90	KNKK336
Houston, TX	600 Travis	931.1125	22232-CD-P/ML-01-91	KNKM200
Hopkinton, MA	Honey Hill, Route 65	931.1125	24190-CD-P/ML-01-90	KNKL551
College Park, GA	4711 Best Road	931.1125	26129-CD-ML-01-91	KNKM493

ATTACHMENT C

APPLICATIONS FOR REINSTATEMENT OR
EXTENSION OF AUTHORIZATIONS TO BE DISMISSED

City	Frequency	Expiration & Date	File Number
Chattanooga, TN	931.1125	07/09/93	23866-CD-P/L-01-92
Atlanta, GA	931.1125	06/09/93	22851-CD-P/L-01-92
Pittsburgh, PA	931.1125	06/08/93	22808-CD-P/L-01-92
El Paso, TX	931.1125	06/08/93	22810-CD-P/L-01-92
Memphis, TN	931.1125	06/19/93	23602-CD-P/L-01-92
Birmingham, AL	931.1125	06/19/93	23608-CD-P/L-01-92
Grand Rapids, MI	931.1125	07/08/93	23861-CD-P/L-01-92
Tulsa, OK	931.1125	07/08/93	23865-CD-P/L-01-92
Louisville, TN	931.1125	06/22/93	23576-CD-P/L-01-92
Chicago, IL	931.1125	06/24/93	23613-CD-P/ML-01-92
Honolulu, HI	931.1125	06/22/93	23556-CD-P/L-01-92
Jacksonville, FL	931.1125	06/22/93	23555-CD-P/ML-01-92
Knoxville, TN	931.1125	06/29/93	23562-CD-P/L-01-92
Harrisburg, PA	931.1125	06/24/93	28611-CD-P/L-01-92
Nashville, TN	931.1125	06/29/93	23561-CD-P/L-01-92
High Point, NC	931.1125	07/08/93	23862-CD-P/L-01-92
Columbus, OH	931.1125	06/24/93	23612-CD-P/L-01-92

1972

ATTACHMENT D

ATTACHMENT D

NON-OPERATIONAL CALIFORNIA AUTHORIZATIONS
TO BE SURRENDERED

City	Location	Freq.	Latitude	Longitude	File Number
Los Angeles	Mt. Wilson	72.40	34 13 30	118 3 48:	24720-CD-R-01-89
San Diego	Mt. Woodson	75.82	33 0 34	116 58 11:	20893-CD-P/ML-01-9
San Diego	530 B St. SD	931.1125	32 43 5	117 9 32:	24720-CD-R-01-89*
		931.5875	32 43 5	117 9 32:	24720-CD-R-01-89*
		72.40	32 43 5	117 9 32:	24720-CD-R-01-89*
		72.18	32 43 5	117 9 32:	24720-CD-R-01-89*
Mission Valley	Camino de la Reina	931.1125	32 45 56	117 9 39:	23415-CD-ML-01-90
Long Beach	Signal Peak	931.1125	33 47 59	118 9 45:	23415-CD-ML-01-90
Chula Vista	Otay Mtn	72.48	32 35 54	116 50 35:	20671-CD-P/L-(01)-
		75.82	32 35 54	116 50 35:	21931-CD-P/ML-01-8
Thousand Oaks	Raznow Peak	931.1125	34 9 57	116 54 6:	Fill-In
Santa Maria	Tepusquet Peak	931.1125	34 54 36	120 11 8:	32109-CD-P/ML-01-8
Encinitas	Water Tank	931.1125	33 3 3	117 16 0:	Fill-In
Panorama City	13652 Cantrara	931.1125	34 12 50	118 25 23:	Fill-In
Fresno	1080 Fulton Mall	931.1125	36 44 6	119 47 23:	21035-CD-P/L-01-87
Visalia	Walnut & Woodland	931.1125	36 18 50	119 19 6:	21035-CD-P/L-01-87
Madera	Hospital	931.1125	36 56 38	120 2 35:	21035-CD-P/L-01-87
Merced	1723 N Street	931.1125	37 18 10	120 29 6:	21035-CD-P/L-01-87
San Francisco	Burk Street	75.54	37 44 36	122 23 8:	24993-CD-P/L-01-88
Foster City	1170 Chess Drive	75.54	37 33 56	122 16 7:	22805-CD-P/ML-01-9
La Jolla	Villa Capri Drive	931.1125	32 50 24	117 14 52:	Fill-In
Costa Mesa	666 Anton Way	75.58			24720-CD-R-01-89*
Covina	210 S. Bernardino	931.1125			---
Ventura	Red Mountain	931.1125			32085-CD-P/ML-01-8
Woodland Hills	5601 DeSoto Avenue	931.1125			---
Los Angeles	600 South Commonwealth Ave.	931.1125			
		72.18			27750-CD-ML-01-92
Glendale	Verduga Peak	931.1125			27750-CD-ML-01-92

1973

City	Location	Freq.	Latitude	Longitude	File Number
Rancho Palos Verdes	28503 Highride Rd.	931.5875 931.1125			27750-CD-ML-01-92
Riverside	1mi. NE of US 215 and Route 60	931.1125			27750-CD-ML-01-92
Indio	Indio Hills	931.1125			27750-CD-ML-01-92
		75.64			27750-CD-ML-01-92
Corona	Santiago Peak	72.52			27750-CD-ML-01-92
		75.56			27750-CD-ML-01-92
		72.18			27750-CD-ML-01-92
San Luis Obispo	Tassajera Peak	931.1125			27750-CD-ML-01-92
Bakersfield	1430 Truxton	931.1125			27750-CD-ML-01-92
Banning	Snow Peak	931.1125			27750-CD-ML-01-92
		75.98			27750-CD-ML-01-92
Frazier Park	Frazier Mountain	931.1125			27750-CD-ML-01-92
Clovis	Black Mountain	931.1125			27750-CD-ML-01-92
Rancho Cordova	1100 Fulsom Blvd.	931.1125			27750-CD-ML-01-92
Sacramento	555 Capitol Street	931.1125			27750-CD-ML-01-92
Woodland	1020 East Street	931.1125			27750-CD-ML-01-92
Lodi	820 South Cliff	931.1125			27750-CD-ML-01-92
Stockton	1325 North Center St.	931.1125			27750-CD-ML-01-92
Modesto	12th & J Streets	931.1125			27750-CD-ML-01-92
Tracy	Mount Oso	931.1125			27750-CD-ML-01-92
Novato	Big Rock Ridge	931.1125			27750-CD-ML-01-92
Hayward	27640 Fairview Ave.	931.1125			27750-CD-ML-01-92
Oakland	Mase Wood Building	931.1125			27750-CD-ML-01-92
San Jose	Sherman Building	931.1125			27750-CD-ML-01-92
Sacramento	North Gate Tower	931.1125			27750-CD-ML-01-92
		75.88			27750-CD-ML-01-92
Avalon	7.5 mi. NW of Avalon	931.5875			27750-CD-ML-01-92
		931.1125			27750-CD-ML-01-92
		931.1125			27750-CD-ML-01-92
Tehachapi	Double Mountain	72.76			27750-CD-ML-01-92

1974

City	Location	Freq.	Latitude	Longitude	File Number
Palmdale	Mount Emma	931.1125			27750-CD-ML-01-92
Escondido	Mt. Palomar	931.1125			27750-CD-ML-01-92
Barstow	3 mi. South of Barstow	931.1125			27750-CD-ML-01-92
Squaw Valley	Bear Mountain	931.1125			27750-CD-ML-01-92
Pineridge	Bald Mountain	931.1125			27750-CD-ML-01-92
		75.94			27750-CD-ML-01-92
Frazier Peak	Frazier Peak	72.96			27750-CD-ML-01-92

* The locations associated with these file numbers are also under File No. 27750-CD-ML-01-92 authorized by the Commission.

ATTACHMENT E

PENDING APPLICATIONS TO BE DISMISSED

City	Location	Frequency	Grant Date	File Number
Buffalo, NY	14 Lafayette Sq.	931.1125	PEND	23566-CD-P/L-1-92
Clifton Park, NY	705 Waite Road	931.1125	PEND	22809-CD-P/L-01-92
Seattle, WA	1st Natl Bank Bldg	931.1125	PEND	22817-CD-P/L-01-92
Detroit, MI	1356 Natl Bank Bldg	931.1125	PEND	22812-CD-P/L-01-92
Las Vegas, NV	1500 E Tropicana	931.5875	PEND	27130-CD-P/ML-01-92
Minneapolis, MN	1117 Marquette Ave.	931.1125	PEND	27140-CD-P/L-01-92
Ft. Worth, TX	14200 Trinity Blvd.	931.1125	PEND	28082-CD-P/ML-01-92
Victorville, CA	Quartzite Mtn.	931.5875	PEND	27127-CD-P/ML-01-92
Palm Springs, CA	Edom Hill	931.5875	PEND	27138-CD-P/ML-01-92
Palmdale, CA	Mt. Houser	931.5875	PEND	27128-CD-P/ML-01-92
La Jolla, CA	Villa Capri Dr.	931.5875	PEND	27136-CD-P/ML-01-92
Fresno, CA	Fulton Mall	931.5875	PEND	27125-CD-P/ML-01-92
Little Rock, AR	4th & Broadway	931.1125	PEND	
St. Louis, MO	212 N Kingshighway	931.1125	PEND	
Omaha, NE	1700 Farnam	931.1125	PEND	
Mobile, AL	Hand Ave.	931.1125	PEND	
Greenville, SC	Paris Mountain	931.1125	PEND	
Charleston, SC	3.3 miles SW of Charleston	931.1125	PEND	

ATTACHMENT F

ATTACHMENT F

APPLICATIONS WHICH SOUTHLAND WILL
PROSECUTE AND WHICH WILL APPEAR ON
PUBLIC NOTICE AS SET FORTH IN CONSENT DECREE

City	Location	Frequency
Thousand Oaks	Raznow Peak	931.1125
Santa Maria	Tepusquet Peak	931.1125
Ventura	Red Mountain	931.1125
Falbrook	Red Mountain	931.1125
Merced	1723 N Street	931.1125
San Luis Obispo	Tassajera Peak	931.1125
Fresno	1060 Fulton Mall	931.1125
Barstow	Flash	931.1125
Joshua Tree	4 miles SSW of Joshua Tree	931.1125
San Jacinto	Daniel Pk	931.1125
Las Vegas	Bank of America	931.1125
Phoenix	South Mountain	931.1125
Reno	Red Peak	931.1125
Los Angeles	1500 San Pablo	931.1125
San Diego	4647 Zion Avenue	931.1125

ATTACHMENT G

AUTHORIZATIONS OR APPLICATIONS TO BE SURRENDERED OR DISMISSED AS SET FORTH IN CONSENT DECREE

City	Location	Frequency	File Number
Thousand Oaks	Raznow Peak	931.1125	-
Santa Maria	Tepusquet Peak	931.1125	32109-CD-P/ML-01-89
Ventura	Red Mountain	931.1125	32085-CD-P/ML-89
Merced	1723 N Street	931.1125	21035-CD-P/L-01-87
Las Vegas	1500 East Tropicana	931.1125	23342-CD-P/ML-01-90
San Luis Obispo	Tassajera Peak	931.1125	32098-CD-P/ML-01-89
Fresno	1060 Fulton Mall	931.1125	21035-CD-P/L-01-87
Phoenix	Valley National Bank Building	931.1125	27232-CD-R-01-89

1978

ATTACHMENT H

PENDING APPLICATIONS WHICH SOUTHLAND
WILL CONTINUE TO PROSECUTE

City	Location	Frequency
Tucson, Arizona	32 North Stone Avenue	931.1125
Syracuse, New York	50 Presidential	931.1125
Grayslake, Illinois	31471 North Ranch	931.1125
Philadelphia, Pennsylvania	1239 East Mermaid Lane	931.1125

1979

ATTACHMENT 1

DECLARATION OF ROBERT F. BICHER III

I, Robert F. Bicher III, do hereby declare and state as follows:

1. I am the President and Chief Executive Officer of Southland Holdings, Inc., ("SHI") and Southland Communications, Inc. ("SCI").

2. SHI and SCI desire to enter into an agreement with Paging Services, Inc. ("PSI") for the sale of all assets of the Debtors, and has filed Motions with the U.S. Bankrutpcy Court for approval of the sale.

3. Pursuant to the sale there will be insufficient funds from the sale proceeds to pay unsecured claims in full and therefore there will be no distribution to equity holders of either SHI or SCI.

4. No prior officers or directors of SHI or SCI, including Ahmad Bayaa and Siad Bayaa, will receive any distribution as a result of the sale.

5. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and would be competent to testify thereon if called upon to do so.

Dated Nov 29, 1993

Robert F Bicher

ROBERT F. BICHER III
PRESIDENT & CHIEF EXECUTIVE OFFICER
SOUTHLAND HOLDINGS, INC.
SOUTHLAND COMMUNICATIONS, INC.

*U.S. Government Printing Office: 1994 — 300-942/00017